

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





ORIGINAL

77-1020

B  
P/S

**United States Court of Appeals  
For the Second Circuit**

UNITED STATES OF AMERICA,

*Appellee,*

-against-

GERARDO SANCHEZ,

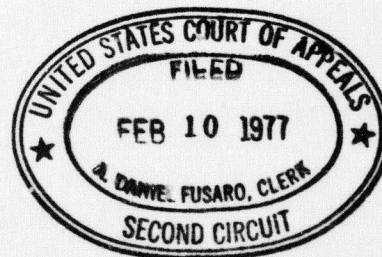
*Appellant.*

*On Appeal From The United States District  
Court For The Southern District Of New York*

APPELLANT'S APPENDIX

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PAGINATION AS IN ORIGINAL COPY



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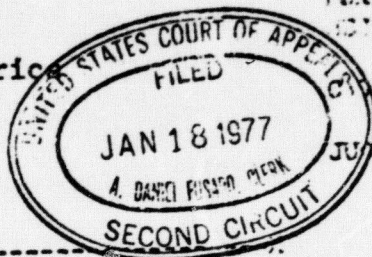
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF  
NEW YORK.

United States of America

-v-

Gerardo Sanchez



Case No. 75 Cr 1095

Judge: Werker

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111-1095



**BEST COPY AVAILABLE**

U.S. COURT - CRIMINAL DOCKET

JUDGE: Assigned Trial  
 AGIS RATE 0863  
 0208-1  
 District Office

U.S. vs. **SANCHEZ, GERARDO, aka "George Scott" a/k/a "Manguin"**  
 defendant

U.S. CODE SECTION  
 21:173, 174  
 26:1257(a)

OFFENSES  
 Consp. to import. &  
 Consp. to distr. Cocaine  
 package

STATES COURT OF APPEALS  
 JAN 18 1977  
 SECOND CIRCUIT

U.S. Attorney or Asst.  
**Daniel J. Beller, AUSA.**  
 (212) 791-1992

Defense: CJA, L. Ret., L. Waived, L. Self, L. None, L. Other, L. P.D., L. C.D.  
**Thomas H. O'Rourke**  
 299-B'way, NYC  
 10007 -1349

Counts: 1

MAGN. CASE NO.

75 1095 01

12-1-75

104

U.S. Custody or Began on Above Charges

High Risk Deter. & Date Design'd

Information

11-12-75

Waived

Superseding Indict/Info

11-9-76

1st Plea

Final Plea

Trial Set For

Voir Dire

Trial Began

Trial Ended

Disposition

Convicted

Acquitted

Dismissed

Not Guilty

Guilty

Not Guilty

Guilty

On All Charges

On Lesser Offense

WCP

Noted/Discontinued

Search Warrant	Issued	Return	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
Summons	Issued				PRELIMINARY EXAMINATION OR REMOVAL HEARING		Dismissed
	Served						
Arrest Warrant					Waived		Held to Answer to U. S. District Court
					Not Waived		
COMPLAINT					Tape No.	INITIAL/No.	Magistrate's Initials
OFFENSE (In Complaint)							

Show last names and suffix numbers of other defendants on same indictment/information

Reyes-2; Echevarria-3; Fuentes-4.

DATE

PROCEEDINGS

11-12-75 Filed indictment and ordered sealed. B/Ws ordered as to all defendants. B/W issued. Weinfeld, J.

11-13-75 Indictment ordered unsealed. Weinfeld, J.

11-14-75 Deft's application for reduction of bail GRANTED. Bail reduced to \$7,500. cash or surety. Deft. to surrender passport to AUSA Beller if bail is posted. Deft. continued remanded in lieu of bail.

11-17-75 Deft. (atty. present) Pleads not guilty. Bail (\$7,500. cash or surety continued. Deft. remanded in lieu of bail. Case assigned to Judge Werker for all purposes. Ward, J.

11-20-75 Remand issued to Marshal's office.

11-21-75 Filed appearance bond in the sum of \$7,500 - Midland Insurance Company.

11-20-75 Filed notice of appearance by Thomas H.O. Rourke on behalf of defendant.

12-02-75 Filed remand dated 11-14-75 - deft. released on bail 11-19-75

V. Excludable Delay

(a) (b) (c) (d)



DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
12-9-75	Filed the following papers recd. from the office of Mag. Ruby: docket sheet; warrant of arrest; appearance sheet by Thomas J. Beller, 299 Edwy, NYC 10007; 227-4530 and disposition sheet.				
12-16-75	Filed defts. affdt. and notice of motion for an order returning personal property to deft., ret. on: date to be fixed by court.				
12-16-75	Filed defts. memorandum of law.				
12-29-75	Filed govts. affdt. of Daniel Beller.				
1-5-76	Filed defts. affdt. and notice of motion to dismiss; inspection of records, etc., ret. on: Jan. 26, 1976. returned - see order 1-20-76				
1-8-76	Filed magistrate's final commitment.				
01-20-76	Filed order that defendants motion filed 1-5-76 is ordered returned to the defendant and stricken from the courts docket. -- Werker, J.				
02-09-76	Filed memo endorsed on defts motion filed 12-16-76 to return property: The Government is directed to return to deft. the originals of all documents seized. The motion is denied in all other respects. So ordered. - Werker, J. m/n				
02-26-76	Filed govts. notice of readiness for trial.				
03-09-76	REFILED defts. affdt. and notice of motion to dismiss indictment; inspection, etc. ret. on: date to be fixed by court. (see entry of 1/5/76 also)				
03-09-76	Filed defts. memorandum of law in support of above motion.				
04-06-76 n	Filed govts. bill of particulars.				
4-13-76	Filed transcript of record of proceedings, dated 11/19/75.				
4-14-76	Filed Govt's affdt. of Daniel J. Beller A.U.S.A. in opposition to the deft's motion to dismiss the indictment.				
5-7-76	Filed transcript of record of proceedings dated Feb. 20, 1976.				
5-7-76	Filed transcript of record of p roceedings dated March 22, 1976.				
4-30-76	PTC is set for May 20, 1976 at 4:30 pm in Rm. 618. Werker, J.				
4-6-76	Filed transcript of record of proceedings dated 1/19/76.				
5-24-76	Filed defts. affdt. and notice of motion for an order dismissing indictment on the grounds that govt., in return for defts. plea of nolo contendere to an indictment in the SD of Florida, etc.				
06-07-76	Filed OPINION #44535..re defts motion including <u>inter alia</u> , a request for a Bill of Particulars and a request for discovery. At a pre-trial conference held on 5-20-76 with all counsel present, I stated on the record that I had decided all of the contested items in favor of the Govt's position. This memorandum is for the purpose of formalizing that statement and described herein. So ordered. -- Werker, J. m/n				
06-07-76	Filed OPINION #44536..in re <u>in camera</u> inspection of file number CI-75-0476, etc. My examination of this file indicates that neither of the agencies mentioned, declined prosecution, etc. As a result any claim by the defendants that the indictment should be dismissed upon the ground that prosecution in another district or by the Atty. Gen'l had been declined, must be denied. So ordered. - Werker, J. m/n				
06-04-76	Filed transcript of record of proceedings dated 4-30-76.				



CR  
~~XXXXXX~~ Docket Continuation

page-3-

DATE	PROCEEDINGS	Date Order & Judgment
2-76	GERARDO SANCHEZ--Filed defts. affdc. and notice of motion to dismiss indictment.	
9-76	Filed transcript of record of proceedings dtd. 5/20/76.	
-76	Filed OPINION # 44835--Deft. moves to dismiss indictment. Motion is denied. So ordered, Werker, J. m/n	
7-76	Filed OPINION # 44827-- Deft. move to dismiss indictment with other requests. All is denied. So ordered, Werker, J. m/n	
-76	PTC held as to deft. Sanchez. Werker, J. (suppression motion pending)	
1/16	Filed defts. notice of motion for an order pursuant to rule 4 of the Second Circuit Rules Regarding prompt disposition of Criminal Cases... Etc..	
1/16	Filed transcript of record of proceedings, dated 7-8-76	
9-76	Filed Superseding Information & waiver of indictment. Deft. pleads guilty to this information, which supersedes Indictment #75Cr.1095. Pre-Sentence Report Ordered. Sentence adjourned to 12-20-76 at 9:30 a.m. in Room 312. Bail on indictment continued.....Werker, J.	
9-76	Filed deft's. acknowledgment of his constitutional rights.	
-12-76	Filed True Copy of an order from the U.S.C.A. the said petition for a writ of mandamus is denied....So Ordered Clerk.. m/n/	
12-76	Filed transcript of record of proceedings, dated 9-4-76	
12-76	Filed Transcript of record of proceedings, dated 11-14-76	
12-76	Filed Judgment & Commitment (Atty Thomas H. O'Rourke, Esq..) The deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of FIVE (5) YEARS, pursuant to Title 18, United States Code, Section 1205 (a) the deft. shall be eligible for release on parole after serving one-third of such term.....WERKER, J. Issued all copies.	
12-76	Filed NOTICE OF APPEAL FROM JUDGMENT & COMMITMENT Dtd. 12/31/76.	
12-76	Deft commitment & entered return, etc. delivered to WARDEN AT MCC NYC ON 12-20-76	
12-76	Filed memorandum from Judge Werker's chambers - Judge Werker exonerated bail with respect to deft Gerardo Sanchez in the above entitled action on December 20, 1976	



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

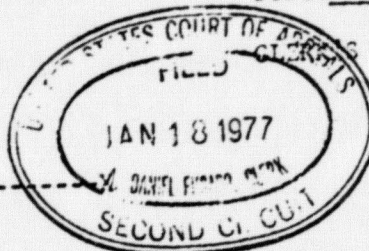
vs.

GERARDO SANCHEZ,

Defendant.

CASE NO. 75CR1095

JUDGE HENRY F. WERKER



I, RAYMOND F. BURKHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A- C, and the original filed papers numbered 1 thru 31, and exhibits \_\_\_\_\_, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILED

PROCEEDINGS

2/26/76  
3/9/76  
11/3/76  
12/4/76

Governments Notice of Readiness.  
Defendant's Notice of Motion to Dismiss Indictment.  
Notice (Def.) of Motion pursuant to Rule 4.  
Record of Proceeding of 11/11/76.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 18th day of January, in the year of our Lord, One thousand nine hundred and seventy -Seven, and of the Independence of the United States the 201st year.

Raymond F. Burkhardt  
Clerk of the Court

## INDICTMENT

DB:art

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

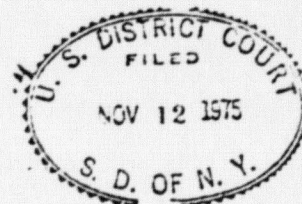
-v-

GERARDO SANCHEZ, a/k/a George Scott,  
a/k/a "Monguin," LUIS REYES, a/k/a  
"Gordo," HECTOR ECHEVERRIA, a/k/a  
Liborio Morales and JULIO FUENTES,

Defendants.

INDICTMENT

75 Cr. 1095



The Grand Jury charges:

1. From on or about the 1st day of December, 1970, and continuously thereafter up to and including December 30, 1970, in the Southern District of New York and elsewhere, GERARDO SANCHEZ, a/k/a George Scott, a/k/a "Monguin," LUIS REYES, a/k/a "Gordo," HECTOR ECHEVERRIA, a/k/a Liborio Morales and JULIO FUENTES the defendants, and others to the Grand Jury unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 173 and 174 of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants and co-conspirators unlawfully, wilfully and knowingly would import and bring into the United States large amounts of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, from and through Mexico, and other countries to the Grand Jury unknown, in violation of Sections 173 and 174 of Title 21, United States Code.



3:art

3. It was further part of said conspiracy that the said defendants and co-conspirators unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of large quantities of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

#### OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following over acts were committed in the Southern District of New York and elsewhere:

1. On or about December 2, 1970 GERARDO SANCHEZ and LUIS REYES met with Roniel Medina and JULIO FUENTES in an apartment in Miami, Florida.
2. On or about December 4, 1970, at approximately 12:50 A.M., JULIO FUENTES flew from Miami, Florida to Los Angeles, California.
3. On or about December 5, 1970, LUIS REYES flew from Miami, Florida to New York, New York.
4. On or about December 6, 1970, JULIO FUENTES registered at the Hotel Del Prado in Mexico, City, Mexico.

5. On or about December 7, 1970, GERARDO SANCHEZ handed an attache case with approximately six and one-half (6 1/2) kilograms of cocaine to JULIO FUENTES at the Romano Cafeteria in Mexico City, Mexico.

6. On or about December 7, 1970, GERARDO SANCHEZ told JULIO FUENTES to travel to Hermosillo, Mexico, leave the attache case in a hotel room, travel to San Diego, California and meet there with LUIS REYES and Roniel Medina, return with them to Hermosillo, Mexico, pick up the cocaine and deliver it to New York City.

7. On or about December 8, 1970, JULIO FUENTES flew from Mexico City, Mexico to Hermosillo, Mexico.

8. On or about December 8, 1970, JULIO FUENTES secreted an attache case with approximately six and one-half kilograms of cocaine in room 207, Hotel San Alberto, Hermosillo, Mexico.

9. On or about December 8, 1970, LUIS REYES, while in Fort Lee, New Jersey, had a telephone conversation with Roniel Medina, who was in Miami, Florida.

10. On or about December 9, 1970, JULIO FUENTES registered at the Holiday Inn Hotel, First and Cedar, San Diego, California.

11. On or about December 9, 1970, LUIS REYES met with Roniel Medina in New York, New York.

12. On or about December 10, 1970, LUIS REYES and Roniel Medina flew from New York, New York, to Los Angeles, California.

13. On or about December 10, 1970, while en route from New York to Los Angeles, LUIS REYES told Roniel Medina that the cocaine which they would pick up belonged to HECTOR ECHEVARRIA.



DB:art

14. On or about December 10, 1970, LUIS REYES and Roniel Medina flew from Los Angeles, California, to San Diego, California.

15. On or about December 10, 1970, LUIS REYES and Roniel Medina registered at the Holiday Inn Hotel, First and Cedar, San Diego, California.

16. On or about December 10, 1970, LUIS REYES told Roniel Medina that he had observed an agent of the Bureau of Narcotics and Dangerous Drugs following him.

17. On or about December 11, 1970, LUIS REYES met with Roniel Medina and JULIO FUENTES at the Holiday Inn Hotel, First and Cedar, San Diego, California.

18. On or about December 11, 1970, LUIS REYES flew from California to New York, New York.

19. On or about December 11, 1970, JULIO FUENTES and Roniel Medina travelled by car to Tucson, Arizona.

20. On or about December 12, 1970, GERARDO SANCHEZ, who was then in New York, New York, had a telephone conversation with JULIO FUENTES, who was then in Tucson, Arizona.

21. On or about December 13, 1970, GERARDO SANCHEZ, who was then in New York, New York, had a telephone conversation with JULIO FUENTES, who was then in Tucson, Arizona.

22. On or about December 14, 1970, GERARDO SANCHEZ, who was then in New York, New York, had a telephone conversation with JULIO FUENTES and Roniel Medina, both of whom were then in Tucson, Arizona.

LB:arc

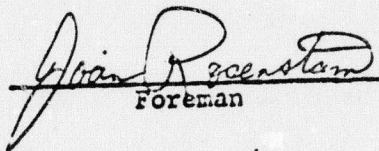
23. On or about December 15, 1970, GERARDO SANCHEZ, who was then in New York, New York, had a telephone conversation with JULIO FUENTES, who was then in Tucson, Arizona.

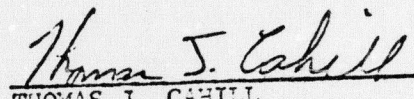
24. On or about December 16, 1970, GERARDO SANCHEZ, travelling under the name George Scott, and HECTOR ECHEVERRIA, travelling under the name Liborio Morales, went from New York, New York, to Tucson, Arizona and from there to Hermosillo, Mexico.

25. On or about December 16, 1970, GERARDO SANCHEZ and HECTOR ECHEVERRIA went to room 207 at the Hotel San Alberto in Hermosillo, Mexico, where the cocaine had been stashed.

26. On or about December 29, 1970, LUIS REYES told Roniel Medina that he hoped to hear from GERARDO SANCHEZ's contact for narcotics in fifteen to twenty days.

(Title 21, United States Code, Sections 173, 174.)

  
Joan Rosenstam  
Foreman

  
THOMAS J. CAHILL  
United States Attorney



# JUDGMENT AND COMMITMENT ORDER

THE SOUTHERN DISTRICT OF NEW YORK

GERARDO SANCHEZ

DOCKET NO. S-75 Cr. 1055

In the presence of the attorney for the government Marc Narmaro, AUSA  
the defendant appeared in person on this date

12 20 1976

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant had counsel appointed by the court and the defendant thereupon waived assistance of counsel.

XX WITH COUNSEL

Thomas H. O'Rourke, Esq.

(Name of Counsel)

THE COURT, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE, NOT GUILTY

There being a finding/verdict of  
NOT GUILTY. Defendant is discharged  
GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing to violate sections 4701, 4703, 4704(a) of Title 26, United States Code. (Title 26, United States Code, Section 7237(a).)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no such motion was made, and because defendant was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS, pursuant to Title 18, United States Code, Section 4205(c) the defendant shall be eligible for release on parole after serving one-third of such term.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set forth on the reverse side of this judgment be imposed. The Court may shorten the conditions of probation, reduce or extend the period of probation, or suspend probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that a certified copy of this judgment and commitment be filed with the clerk of the court and one copy be sent to the Attorney General.

SIGNED BY  
XX U.S. District Judge

U.S. Magistrate

HENRY P. WERKER

Date

December 20, 1976

7

MEMORANDUM AND ORDER OF THE DISTRICT COURT  
DATED JULY 16, 1976

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA :

- v - :

GERARDO SANCHEZ, a/k/a "George  
Scott," a/k/a "Monguin," and HECTOR  
ECHEVERRIA, a/k/a "Liborio Morales," :

Defendants. :  
-----x

HENRY F. WERKER, D. J.

44827  
OPINION  
75 Cr. 1095 (HFW)

S.D. OF N.Y.

JUL 22 5 11 PM '76

FILED  
U.S. DISTRICT COURT

The defendants in this action are charged with conspiracy to violate 21 U.S.C. §§ 173 and 174. The indictment charges that the defendants conspired to bring narcotic drugs into the United States through Mexico and other countries unknown to the grand jury.

Motions have been filed on behalf of Gerardo Sanchez and Hector Echeverria to dismiss the indictment on several grounds. The court will consider each motion separately and where necessary will give the facts relevant to that particular motion.

Hector Echeverria has moved to dismiss the indictment on the grounds of former jeopardy, res judicata, collateral estoppel and comity. Mr. Echeverria has supplied the court with copies of seven federal indictments in which he has been named. However, for the purposes of this motion, it is necessary to review in some detail only three of them.<sup>1</sup>

Indictment 75 Cr. 1095

The instant indictment charges that on or about December 2, 1970, Gerardo Sanchez met with Luis Reyes and Julio Fuentes in Florida at which time it

22

MICROFILM

JUL 23 1976



was arranged that Fuentes would go to Mexico to receive a cocaine shipment. On or about December 7, 1970, in Mexico City, Sanchez gave Fuentes an attache case containing approximately 6½ kilograms of cocaine. Sanchez told Fuentes to take the attache case to Hermosillo, Mexico and leave it in a hotel room. Fuentes was then to travel to San Diego, California, meet with Reyes and Roniel Medina, an unindicted co-conspirator, and return with them to Hermosillo to pick up the cocaine which was to be delivered to New York City.

Reyes and Medina flew from New York to Los Angeles and while en route, Reyes told Medina that the cocaine belonged to Echeverria. The two flew from Los Angeles to San Diego where they met Fuentes. Reyes, having noticed an agent of the BNDD following him, returned to New York and Fuentes and Medina travelled by car to Phoenix, Arizona, from which they had several telephone conversations with Sanchez who was then in New York.

On or about December 16, 1970, Sanchez, travelling under the name George Scott, and Echeverria, travelling under the name Liborio Morales went from New York to Tucson to Hermosillo. On that day, they went to the Hotel San Alberto where the cocaine had been concealed by Fuentes. Sanchez and Echeverria were arrested in Mexico and were charged by the Mexican authorities with unlawful possession of narcotics.

Indictment 72 Cr. 209

A judgment of conviction was entered against Echeverria on April 4, 1972. The indictment charged this defendant and Ruben Pena and Carlos Fernandez with conspiring from October 1, 1970 to April 30, 1971 to sell narcotics in violation of 21 U.S.C. §§ 4705(a), 7237(b).

The evidence at trial showed that Pena had a connection in Chile with a supplier of cocaine, Francesco Guinart. Pena offered to sell this cocaine to

Echeverria who stated that he would take all the cocaine Pena received. In June or July of 1970 a Chilean courier sent by Guinart gave Pena a suitcase containing about 8 kilograms of cocaine. Pena in turn gave the suitcase to Echeverria.

In August 1970, the same courier gave Pena a key to a locker in the Pennsylvania Railroad Station in New York and told him the locker contained approximately 4 kilograms of cocaine. Pena gave the key to Echeverria who paid for the cocaine.

In October, 1970, Pena was contacted by a different courier from Chile, Jaime Segura, who was in fact a government informer. Segura had obtained the cocaine from Guinart in Chile and gave it to BNDD agents there. The agents took the cocaine to New York where they had it chemically tested and put it under guard in a room in the Commodore Hotel. On October 22, 1970, Agent Pohl put one of the packages of cocaine from the Commodore Hotel into a locker in Grand Central Station. He then returned to the hotel and gave the key to Segura. Segura called Pena who came to the hotel and got the key. From there, Pena went to a restaurant where he gave the key to Echeverria. Later that night Echeverria retrieved the package from the locker.

The next day, virtually the same operation was repeated. The two remaining packages of cocaine were placed in a locker in Grand Central and the key was given to Segura. Later that night, Echeverria and a co-defendant, Carlos Fernandez, were seen entering the station. Fernandez took the package of cocaine from the locker and left the station with Echeverria.

Indictment 74 Cr. 18

On January 9, 1974, Echeverria and Luis Reyes, a co-defendant in the instant case, were indicted with twenty other defendants for violations of the federal narcotics laws. All of the defendants were charged with conspiracy to



traffic in narcotics in violation of 21 U.S.C. §§ 173, 174. In addition, Reyes and Echeverria were each charged with a substantive offense. Echeverria was acquitted and Reyes was convicted on the conspiracy charge only.

The facts developed at trial related to the distribution of heroin in New York and New Jersey which had been shipped directly from South America. The heroin was smuggled into the United States from South America by Hovsep Caramian. It remained in the trunk of a car at John F. Kennedy International Airport until Roberto Arenas and Segundo Coronel agreed to take possession of it. Manuel Noa and Caramian went to the airport where Noa picked up the heroin and brought it to two apartments in Manhattan he had leased for keeping narcotics. After testing it and selling 5 kilograms, Noa, suspecting that he was being followed, gave the remaining 55 kilograms to Arenas. Coronel told Arenas that Raul Ortega, one of the indicted co-conspirators, would take the entire remaining shipment. Ortega, who lived in Florida, came to New York in mid or late February and picked up the heroin at Arenas' apartment on Audobon Avenue between 187th and 188th Streets. Ortega told Arenas he was taking the drugs to his sister's apartment in New Jersey. Subsequently, Caramian asked Arenas to return 20 kilograms. Ortega brought 20 kilograms back to Arenas' apartment, but Caramian only took 10 and Ortega left the apartment with the other 10 in a suitcase.

On March 11, 1970, in Miami, Florida, Ortega asked Gonzalez to assist him in distributing the 45 kilograms. He gave Gonzalez money to buy a heat sealer to seal plastic bags and for his plane fare. During the plane ride to Newark Airport, Ortega told Gonzalez that 3 kilograms had already been sold to Jorge Infiesta, another defendant. The next morning, Ortega introduced Gonzalez to his sister and brother-in-law, Francesca and Ciro Calana, in whose apartment Ortega was storing 20 kilograms of the heroin.

Ortega and two co-conspirators, Gonzalez and Miguel Rodriguez, visited various Cuban bars and restaurants in upper Manhattan to find buyers for the heroin. The heroin was cut at the residences of two co-conspirators, Ciro Calana and Infiesta. Deliveries and subsequent payments were made in various locations in New York, including a gas station in Manhattan owned by Joaquin R. Prada. The distribution ran from about March 12, 1970 through May 1970, and the last payments were made in September 1970.

Most of the cutting, mixing, and rebagging of the heroin was done in the Calana's home. On one occasion it was done in Infiesta's Manhattan apartment with Infiesta and Reyes, who were partners, assisting. Reyes was in Infiesta's apartment on other occasions while the heroin was bagged for distribution, and on one occasion, Reyes left the apartment with 2½ kilograms of heroin supplied by Ortega.

The Second Circuit has recently reviewed the law regarding double jeopardy claims arising out of multiple narcotics conspiracy prosecutions. In United States v. Papa, Civ. No. 75-267 (2d Cir., April 2, 1976), the court adhered to the traditional rule that the defendant bears the initial burden of going forward to show that the prosecutions are actually for the same offense in law and in fact. See United States v. Mallah, 503 F.2d 971 (2d Cir. 1974), cert. denied, 420 U.S. 995 (1975); United States v. McCall, 489 F.2d 359 (2d Cir. 1973), cert. denied, 419 U.S. 849 (1974). The offenses prosecuted in each indictment will be considered the same only if the evidence required to support a conviction on one indictment is sufficient to sustain a conviction on the second. United States v. Pacelli, 470 F.2d 67, 72 (2d Cir. 1972), cert. denied, 410 U.S. 983 (1973); United States v. Kramer, 289 F.2d 909, 913 (2d Cir. 1961). The court in Papa modified the defendant's burden under this test to some extent by shifting the burden to the Government to rebut the inference of a unity of identity among multiple conspiracies once the defendant has introduced



sufficient evidence that the several conspiracies alleged are in fact one. Papa, supra at 2987. Having examined the arguments and evidence put forth by this defendant, the court finds that Echeverria has failed to meet his initial burden to show that each of the conspiracies are in fact all part of one large enterprise. In so concluding the court is mindful of the fact that prosecutorial discretion may account for the fact that each indictment includes entirely different overt acts. United States v. Mallah, supra at 983.

A comparison of the activities alleged in the instant case and in indictment 72 Cr. 209 shows these operations to be entirely distinct. Echeverria is the only participant common to both, and there is no reason for the court to believe that any of the co-defendants in the instant case were additional personnel, not named in this earlier indictment, but who were nonetheless participants in the enterprise. All of Echeverria's participation in 72 Cr. 209 took place between August and October 1970 in the Pennsylvania and Grand Central Railroad Stations. The cocaine was imported directly from Chile by a courier from Francesco Guinart. The delivery of the cocaine in the case before the court took place outside the United States in Hermosillo, Mexico, to which Echeverria himself with his co-defendant Sanchez had travelled. Although the source of the drugs has not been identified, there is no evidence before the court that this is simply a continuation of the Guinart supply with merely a different method of delivery. It is significant that Echeverria himself was to have smuggled the narcotics into the United States in the present indictment while in the conspiracy charged in 72 Cr. 209 he had no contact with the drugs until they had arrived in New York City. Furthermore the present indictment charges that the conspiracy began on December 2, 1970, more than a month after the 72 Cr. 209 conspiracy had ended. Neither of these conspiracies can be compared in size and scope to the one described by the court in

United States v. Ortega-Alvarez, 506 F.2d 455 (2d Cir. 1974), cert. denied, 421 U.S. 910 (1975). Each of these two conspiracies had completely different personnel with the exception of Echeverria; the principal activities in each took place on two opposite sides of the United States. Thus it is the court's conclusion that the defendant has failed to come forward with any evidence to show that these conspiracies are in fact the same entity.

The court comes to the same conclusion with respect to the 74 Cr. 1095 indictment. Echeverria was acquitted on charges of conspiracy and substantive offenses. The trial indicated a large conspiracy to import and distribute heroin directly from South America. There is no indication that the government introduced any evidence to indicate that Echeverria occupied a pivotal position in that conspiracy. The court finds it significant that although both Reyes and Echeverria were alleged to be participants in both conspiracies, the principals, the method of operation, the locations of the important activities, and the majority of the participants are entirely different.

Echeverria asks the court to conclude that since both indictments charge violations of the same statute, they must refer to the same conspiracy. This begs the question. It is undoubtedly true that New York is large enough to support two independent but simultaneous drug conspiracies. United States v. Mallah, supra at 983. It is to be expected that the indictments for participation in two such ventures will charge the defendants named therein with violations of the same criminal statute. Surely that is not sufficient to give rise to a claim of double jeopardy.

The court cannot conclude that there is but one conspiracy from the fact that the two ventures shared a common goal and two members. In fact the goals were different. In the instant case, the defendants allegedly sought to



distribute a comparatively small shipment of cocaine of which they took possession in Mexico. In the prior indictments, twenty-two defendants were alleged to have taken part in a complex organization which distributed a large shipment of heroin imported from South America. The defendants used bases of operation in New York and New Jersey. Neither Echeverria nor Reyes were alleged to have had a pivotal role. The defendant has made no showing from which the court could infer that the instant prosecution is merely a part of the larger operation described above. Thus with respect to Echeverria's claim relating to prior federal prosecutions, the court finds the motion must be denied.

#### Mexican Prosecution

Defendants Echeverria and Sanchez<sup>2</sup> also move for dismissal of this indictment based on a prior prosecution in Mexico. As was noted above in the discussion of the instant indictment, they were arrested in Mexico for possession of cocaine and convicted by a trial court, but the Mexico Court of Appeals reversed the conviction and dismissed the indictment in an opinion and on grounds not put before the court. For the reasons set out below, the court denies this motion.

First, there is substantial doubt that the crime charged in Mexico is the same crime as that charged in the United States. Although the record of the Mexican proceedings has not been made available to the court, the Government contends that the Mexican prosecution charged possession of cocaine while the instant indictment charges conspiracy.<sup>3</sup> Even if the first prosecution had been in a United States federal district court, the double jeopardy clause does not bar the prosecution of conspiracy to distribute or sell narcotics and the substantive offense of possession of those drugs in separate indictments. United States v. Ortega-Alvarez, 506 F.2d at 457. This is true even where the evidence to convict on one charge is similar to that required for the second provided that the elements of the

crime are substantially different. United States v. Nathan, 476 F.2d 456 (2d Cir.), cert. denied, 414 U.S. 823 (1973). Echeverria argues that where the evidence presented in the first trial includes almost every fact alleged in the second indictment double jeopardy prevents the second trial. However, as the Court of Appeals for the District of Columbia held, "[t]he issue . . . does not turn on the identity of evidence actually produced but on whether the same evidence is required to prove the two offenses." United States v. Boyle, 482 F.2d 755 (D.C. Cir.), cert. denied, 414 U.S. 1076 (1973) (emphasis in original). The defendants cannot reasonably contend that the evidence required to prove conspiracy to distribute narcotics is identical to that required to prove possession.

Second, the court concludes that the prohibition against double jeopardy would not bar the trial of this offense even if the defendants were indicted for the same crime with which they are charged here. The Supreme Court has held consistently that the double jeopardy clause does not prohibit successive prosecutions by separate sovereigns for the same criminal act. Waller v. Florida, 397 U.S. 387 (1970); Abbate v. United States, 359 U.S. 187 (1959); Bartkus v. Illinois, 359 U.S. 121 (1959).

The defendant cites United States v. Furlong, 5 Wheat. (18 U.S.) 184 (1820) as authority for the proposition that an acquittal in a foreign country bars a retrial in this country. However, for several reasons this case does not help the defendants' position. The authority of this case is severely undermined by the opinions in Abbate and Bartkus. In Abbate the Supreme Court noted that Justice Johnson had recognized the potential double jeopardy issue that arose when the courts of another country entered a judgment of acquittal against a defendant being charged for the same crime in this country. The Court viewed that situation as related to the problem it faced -- whether a prior state prosecution barred a



subsequent federal one. The Court resolved the question contrary to the way defendants propose. Nowhere in the opinion does the Court suggest that if the issue were to arise between the United States and a foreign country, the Court would view that problem any differently than it did the question of consecutive state and federal prosecutions. This conclusion is further supported by Bartkus in which the Supreme Court declined to rely on certain "dubious" English precedents concerning the effect of foreign criminal judgments on the ability of English courts to prosecute defendants on charges arising from the same conduct. Bartkus, supra at 128 n.9. In view of the Court's decision that the double jeopardy clause does not prevent a state from prosecuting a defendant after a federal prosecution for crimes arising out of the same conduct, this court refuses to find a constitutional bar to a trial on these charges.

This court agrees with the principles expressed by Chief Justice Taft in United States v. Lanza, 260 U.S. 377, 382 (1922) and finds them equally applicable to the case at bar.

"Each government in determining what shall be an offense against its peace and dignity is exercising its own sovereignty, not that of the other."

To hold otherwise would unnecessarily hinder federal law enforcement. It would be an intolerable burden to the federal judiciary to require it to analyze criminal prosecutions in foreign countries to determine to what extent, if any, such prosecutions are coterminous with a pending federal action. This would require reliance upon the records of foreign countries which as has been demonstrated in this case are frequently difficult to obtain. It would impinge upon the sovereignty of the United States to hold that its authority to proceed against a criminal defendant depends upon the absence of similar proceedings in a foreign country.

Echeverria also urges the doctrines of collateral estoppel, res

judicata and comity as further grounds for dismissing this indictment citing the reversal and acquittal by the Mexican Court of Appeals. The court concludes that these contentions are without merit. First, it should be noted that an acquittal on a charge of possession does not necessarily require an acquittal on a charge of conspiracy since the elements of the crimes are different. Second, it is clearly the law of the United States that the reversal of a conviction by a Court of Appeals, even on the grounds that the evidence presented to the jury was legally insufficient, does not bar a retrial of those same charges. Green v. United States, 355 U.S. 184 (1957). Where a defendant is convicted of a charge in a trial court and that judgment is reversed on an appeal which the defendant himself initiated, he may be retried on any of those charges. Jones v. Breed, 497 F.2d 1160 (9th Cir. 1974), vacated on other grounds, 421 U.S. 519 (1975). Thus, even if the charges were the same, the court finds no bar to the trial of these charges. The reversal by the Mexican Court of Appeals has in no way resulted in a conclusive determination of the issues before this court.

Collateral estoppel, a component of the constitutional guarantee against double jeopardy is equally unavailing. The Supreme Court held in Ashe v. Swenson, 397 U.S. 436, 444 (1970), that collateral estoppel applies to criminal proceedings and

"[w]here a previous judgment of acquittal was based on a general verdict [the court must] 'examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.' " (footnote omitted).

Thus the doctrine of collateral estoppel "precludes prosecution when an issue of ultimate fact has been determined in a defendant's favor by a valid and final



judgment in a prior proceeding between the same parties. . . . The defendant has the burden of establishing that the issue he seeks to foreclose from the second litigation was 'necessarily' resolved in his favor by the first verdict." United States v. Seijo, Civ. No. 75-1377 (2d Cir., June 24, 1976) at 4390 (citations omitted). It should be clear from the above formulations why the court is not constrained to dismiss this indictment on collateral estoppel grounds: first, this is not a litigation between the same parties that were before the court in the Mexican prosecution; second, the trial court did not resolve any issue in the defendants' favor; third, the defendant has not even tried to sustain the burden of proof that any such issue was necessarily resolved in his favor in the Mexican proceeding. No details of the Mexican prosecution have been supplied; rather, the defendant has merely reiterated repeatedly conclusory statements about the similarity of the proceedings. Any one of these reasons is sufficient to reject a bar to retrial under the doctrine of collateral estoppel; the combination of the three makes this conclusion inescapable.

The defendant urges the court to dismiss the indictment on the ground of comity. However, comity is a doctrine of discretion under which a court may enforce the laws of another country where they are not contrary to its own public policy or prejudicial to its interests. The doctrine does not require this court to dismiss an indictment charging the commission of criminal acts in this country on the basis that the defendant's conviction for related criminal acts within Mexico was reversed by the appellate court of that country. There has been no proof on the subject of the foreign law on this subject, and there is no authority which suggests that the court's refusal to exercise its discretion violates the public policy or the principles of law of the United States. The motion is therefore denied.

As part of Echeverria's motion on former jeopardy, he asks this court

for an order pursuant to Rule 17 of the Federal Rules of Criminal Procedure requesting the Mexican government to produce defendants' trial record in Mexico. Rule 17e(2) provides that a subpoena directed to a witness in a foreign country shall be pursuant to the provisions of 28 U.S.C. § 1783. Section 1783, which relates to the subpoena of a person in a foreign country, refers only to nationals or residents of the United States who live in a foreign country, and courts have held specifically that aliens cannot be compelled to respond to a subpoena when they are, at the time of issuance, inhabitants of a foreign country. United States v. Haim, 218 F. Supp. 922 (S.D.N.Y. 1963); United States v. Best, 76 F. Supp. 138 (D. Mass. 1948), aff'd, 184 F.2d 131 (1st Cir. 1950), cert. denied, 340 U.S. 939 (1951). Thus, the court must deny this request as being beyond the scope of its authority.

Echeverria has also moved for an order directing the United States Government to indicate and produce any evidence and information which it supplied to the Mexican authorities in the investigation of this case. This is an attempt to get indirectly what the defendant may not have directly. Rule 16(a)(2) excludes from the scope of proper discovery "reports, memoranda, or other internal governmental documents made by the attorney for the government or other government agents in connection with the investigation or prosecution of the case." Furthermore, in response to an earlier motion by this defendant the court has examined in camera the government's file with respect to this case and found nothing which is relevant to the preparation of the defense. The motion for an order requiring the Government to produce the evidence, if any, which it made available to the Mexican authorities is denied.

Echeverria has also moved for an order granting him the right to inspect the grand jury minutes with respect to seven specific indictments.<sup>4</sup> However, pre-trial disclosure of the contents of grand jury minutes is permitted



only where there is some showing of particularized need. Dennis v. United States, 384 U.S. 855 (1966); United States v. Ruggiero, 472 F.2d 599 (2d Cir.), cert. denied, 412 U.S. 939 (1973); United States v. Youngblood, 379 F.2d 365 (2d Cir. 1967). As the above discussion of the former jeopardy issue indicates, the court is satisfied that the indictments to which this defendant refers charge separate and distinct conspiracies.

Echeverria has failed to do more than make conclusory allegations about the relationship of these enterprises. The court concludes that the defendant has failed to meet the heavy burden which is required to violate the secrecy of the grand jury. Campbell v. Eastland, 307 F.2d 478, 487 (5th Cir. 1962), cert. denied, 371 U.S. 955 (1963).

With respect to the motion to dismiss the indictment on the ground that the defendant was singled out for prosecution in violation of the Department of Justice policy on double jeopardy, the defendant's papers are devoid of any allegations which even remotely suggest the accuracy of the statement. The motion is utterly frivolous and consequently is denied.

Furthermore, the court found above that the record shows on its face that the conspiracies with which this defendant has been charged are as a matter of law distinct. Therefore, the motion for a hearing on the issue and for an order permitting the defendant to present the question to the jury is denied. Short v. United States, 91 F.2d 614 (4th Cir. 1937).

Defendant Sanchez has moved this court for dismissal of the indictment on the ground that this prosecution subjects the defendant to double jeopardy in that this indictment charges the same conspiracy as the one charged in indictment 72 Cr. 735 upon which a judgment of conviction was entered in the Southern District of Florida. The defendant must sustain the initial burden of going

forward with respect to this claim. United States v. Mallah, supra. There is an absolute failure of proof with respect to this motion. The defendant has provided no memorandum, no affidavit, not even a copy of the Florida indictment in question. Furthermore, the minutes of a hearing on this indictment held on February 26, 1973 indicate that the charges involve a conspiracy to impede the Internal Revenue Service in its audit of and collection of taxes from two corporations and two individuals. These charges are clearly different from those charged in the instant indictment. Consequently the motion is denied.

Both Echeverria and Sanchez move to dismiss the indictment on the ground that it is barred by Article 36, para. 2(a)(i) of the Single Convention on Narcotic Drugs of 1961 to which Mexico and the United States are both signatories. For the reasons stated below, the court denies the motion. The thrust of the defendants' argument is that the treaty gives countries jurisdiction over criminal acts over which they would not ordinarily have jurisdiction. Thus where several acts in different countries are all part of one criminal enterprise, the country in which the principal acts were committed has jurisdiction to prosecute the defendant for all of the acts committed in furtherance of the offense irrespective of the actual location in which they were performed. The court agrees that this is one of the principle objectives of Article 36 of the Convention.

The general commentary to Article 36 provides that:

"6. ... [A]rticle 36 ... tries to ensure that [for] all activities of the illicit traffic and all forms of participation in such activities not only the principal offenders[,] but also their accomplices, will be prosecuted, that activities of the illicit traffic will be subject to penal sanctions even if they have not been completed (preparatory acts, conspiracy and attempts) [and] that criminals will not escape prosecution and punishment on the technical ground of lack of local jurisdiction in the country in which they are found. ..."



However, the purposes of Article 36 are not limited to achieving only these objectives. On the contrary the commentary makes it clear that the purpose is to create and expand jurisdiction over drug-related offenses without offending national law. Thus paragraph 2(a)(i) provides, "Subject to the constitutional limitations of a Party, its legal system and domestic law, (a)(i). Each of the offences enumerated in paragraph 1, if committed in different countries, shall be considered as a distinct offence."

Thus as the commentary states explicitly, "If the above-mentioned acts are committed in different countries and are consequently considered as distinct offences, each of these countries would have jurisdiction, on the basis of the universally accepted principle of territoriality, over those acts which were committed on their respective territories." (footnote omitted). The Convention, as it makes clear by its reference to the domestic law of each Party, intends its principles to become law only to the extent that they do not violate a particular Party's law of double jeopardy. Subject only to that limitation,

"2. . . . The purpose of clause (i) is to give the courts of a country the necessary territorial jurisdiction in cases where they might not otherwise possess it, and in particular to ensure that a country shall have territorial jurisdiction over accessory acts even though the principal acts were not committed in its territory and even though it in general assigns jurisdiction over accessory acts to the courts in whose districts the principal acts were committed" (footnote omitted). Commentary, Single Convention on Narcotic Drugs, 1961, Art. 36, para. 2(a)(i).

As was made clear above, the instant prosecution does not violate the principles of double jeopardy as applied by the United States. It would be a perversion of the treaty's intent to find that it imposes a stricter rule of double jeopardy to the offenses to which the treaty applies than the United States would ordinarily apply in cases of successive prosecutions. As the commentary to

paragraph 2(a)(ii) indicates, the drafters were primarily concerned with those jurisdictions in which "preparatory acts" are not a general category of punishable behavior or in which conspiracy may be prosecuted only as part of the substantive offense. The Convention encourages those Parties to view narcotic offenses as such grave acts as to warrant the separate prosecution of preparatory acts, provided that such prosecution would not violate that country's law of double jeopardy. Defendant's motion with respect to the Single Convention is denied.

Defendants Sanchez and Echeverria have also moved for dismissal of the indictment as violating their rights under the sixth amendment, Rule 48(b) of the Federal Rules of Criminal Procedure, and the due process clause of the fifth amendment. This court believes that the holding of United States v. Marion, 404 U.S. 307 (1971) dictates a denial of these motions.

The defendants, recognizing that there is little if any authority for dismissal of an indictment solely on the ground of pre-indictment delay,<sup>5</sup> suggest that the court consider their arrests and trial in Mexico as constituting them as "accuseds" pursuant to Dillingham v. United States, 44 U.S.L.W. 3327 (U.S., Dec. 1, 1975), thus affording them the protection of the sixth amendment and Rule 48(b). However, as was discussed above, the court is not bound by the actions of the Mexican court irrespective of the fact that American agents may have participated in the arrests or provided information which lead to them.

In Marion the defendants' company had been subject to a Federal Trade Commission cease-and-desist order and a series of newspaper articles had named the company as one engaging in fraudulent practices employed by home improvement firms. The article also quoted the United States Attorney for the District of Columbia, describing the activities of such companies and predicting forthcoming indictments. The United States Attorneys office asked the company



to produce its records for inspection and interviewed Marion. Yet it was not until two years later that an indictment was handed down, three years after the alleged occurrence of the criminal acts. Nonetheless, the Court held that the defendants had not become "accuseds" until the indictment was filed. The defendants had been subjected to adverse publicity in their own district and were definitely aware that their activities were being investigated by the United States Attorney, yet, the Court refused to find that these burdens were sufficient to constitute the defendants as accuseds.

Here, the defendants were arrested, convicted and discharged in a foreign country. There was no continuing investigation by the United States Attorney with respect to this particular enterprise, until October of 1975. The United States government did not formally charge these defendants or take any other action which would result in these defendants becoming "accuseds." In United States v. Ewell, 383 U.S. 116, 120 (1966), the Court recognized that the purpose of the sixth amendment was "to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of the accused to defend himself." Except perhaps to the last<sup>6</sup> these principles have not been violated. The defendants have not suffered substantial incarceration or lengthy public accusation and obloquy. Thus the court finds that the rule stated in Marion, which limits the guarantees of the sixth amendment to those who have been accused of a crime, should apply in the instant case.

The same rule applies to Federal Rule of Criminal Procedure 48(b) which by its terms applies to defendants "who ha[ve] been held to answer to the district court." "The rule clearly is limited to post-arrest situations." United States v. Marion, supra at 319 and cases cited therein.

The defendants assert that their defenses have been severely prejudiced by the delay in filing the indictment. They argue that even if the court denies the motion under the sixth amendment and Rule 48(b) the motion should nonetheless be granted pursuant to the dictates of the due process clause. As the Supreme Court held in Marion, if the defendants succeed in showing at trial that the pre-indictment delay has caused substantial prejudice to their rights to a fair trial and that the delay itself was an intentional device used by the Government to gain a tactical advantage over the accused, the court must at that time dismiss the indictment as violative of the due process clause of the fifth amendment. The court must await the Government's proof at trial and the defense's showing of prejudice to determine the extent, if any, of the actual prejudice to the defendant caused directly by the delay. In doing so the court will keep in mind the Supreme Court's admonition that every delay-caused detriment to a defendant's case does not necessarily require the dismissal of a criminal prosecution. Hoffa v. United States, 385 U.S. 293 (1966).

Echeverria also asserts that his right to a speedy trial has been violated by the eight-month delay since his indictment and urges the court to dismiss the indictment on that ground. This the Court will not do. In Barker v. Wingo, 407 U.S. 514 (1972), the Supreme Court explained the balancing process which the court must conduct to determine whether a defendant's right to a speedy trial has been violated. The four factors which the Court identified as important were the length of the delay, the reason for the delay, the defendant's assertion of his right, and the prejudice to the defendant. As this court has indicated previously, Sanchez and Echeverria have filed numerous and untimely pre-trial motions and Echeverria has failed to comply with directives of this court. These defendants were indicted eight months ago; they have been released on bail for all



at one week of that time. The Government filed a notice of readiness for trial as of March 1, 1976, four months after the filing of the indictment. The remaining four months have been consumed with defendants' motions.<sup>7</sup> Under these circumstances the court finds no denial of defendants' right to a speedy trial.

Defendant Sanchez moved for dismissal of the indictment on the ground that in exchange for a plea of nolo contendere the Government agreed not to prosecute him for charges known to it at the time of the plea. The court finds that the Government did know of this offense at that time and agrees that if the United States Attorney for the Southern District of Florida had made such an agreement, the United States Attorney in this district would be bound by that agreement. However, the minutes of a hearing held on February 26, 1973 and those of the sentencing on March 1, 1973 do not support the contention that the prosecutor agreed that Sanchez would be immune from further prosecution. Both hearings include extensive discussions regarding the contents of the agreement. Twice Sanchez acknowledged that the terms, as stated, were correct and that no additional promises were made. The court denies the motion.

There are a few remaining miscellaneous requests in these motion papers which have already been resolved by this court during hearings on this matter. The court will merely reiterate those holdings for purposes of the record.

As to Echeverria's motion, filed February 2, 1976, the court has granted and the Government has complied with defendant's request for an order directing the Government to furnish copies of the exhibits introduced at a pre-indictment delay hearing before the Honorable Judge McMahon. In all other respects the February 2, 1976 motion has been denied.

As to Sanchez's motion filed March 9, 1976, the court will hold a suppression hearing just prior to the commencement of the trial with respect to

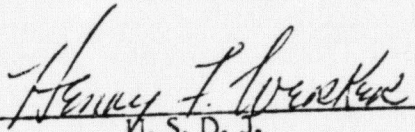
Items V and VI. With respect to Items VIII and IX, the court entered an order on May 28, 1976. In open court, Item XIV was granted. In all other respects, the motion is denied.

The effect of this decision is to deny entirely the motions filed by Echeverria on March 22, 1976 and April 28, 1976.

With respect to requests for additional time to move against the indictment, the defendants may at any time during the trial move against the indictment. However, the time for such pre-trial motions has long since passed. Such requests are, therefore, denied.

SO ORDERED.

DATED: New York, New York  
July 16, 1976.

  
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U. S. D. J.



## UNITED STATES v. SANCHEZ and ECHEVERRIA, 75 Civ. 1095 (HFW)

## NOTES

1. Orders of nolle prosequi were filed on 4/14/72 with respect to 71 Cr. 1344 and 72 Cr. 179. 72 Cr. 1115 does not name Echeverria as an indicted co-conspirator. 73 Cr. 950 was superseded by 74 Cr. 18.
2. With the exception of a notice of motion, a brief recitation of the facts surrounding the defendant's arrest in Mexico and a translation of the Mexican statute under which he was charged, Sanchez has not submitted any affidavits or a memorandum of law with respect to his motion to dismiss the indictment on the grounds that it is barred by double jeopardy, collateral estoppel and res judicata because of the Mexican prosecution. Thus the defense's contentions to which the court refers are those of defendant Echeverria. However, the court will consider the arguments as if Sanchez had advanced them also.
3. Echeverria concedes that Mexico does not have the crime of conspiracy but urges the court to consider the possession charge as its functional equivalent.
4. Defendant Sanchez has made a similar motion with respect to the Grand Jury Minutes for this indictment and for 72 Cr. 735 again without any supporting material. The court will again treat Mr. Echeverria's motion as though it had been made on behalf of both defendants.
5. See United States v. Marion, 404 U.S. at 315 & nn. 7&8.
6. See discussion regarding deprivation of due process, infra.
7. For the record, the following is a list of the motions which have been filed to date:

## FOR SANCHEZ

1. motion filed December 16, 1975 seeking return of all personal property;
2. motion without supporting affidavit filed January 5, 1976 (refiled on March 11 after compliance with local rule 3) seeking (1) to dismiss indictment on the ground of double jeopardy, (2) to dismiss indictment on the grounds of double jeopardy, res judicata, and collateral estoppel, (3) to dismiss the indictment for denial of speedy trial based on pre-indictment delay, (4) to prohibit use of evidence as fruit of an illegal search and seizure or electronic surveillance, (5) to prohibit use of evidence obtained in violation of fifth and sixth amendments, (6) to permit defendant to inspect grand jury minutes, (7) to permit defendant to travel to every place, among others, where overt act committed, (8) bill of particulars, (9) discovery and inspection, (10) to dismiss indictment for repugnancy, (11-13) severance on several grounds, (14) to permit defendant to join in motions of co-defendants;

3. motion filed May 24, 1976 to dismiss indictment on the ground that the Government had agreed not to prosecute defendant for these charges;
4. motion filed July 2, 1976 to dismiss for denial of speedy trial based on post-indictment delay.

FOR ECHEVERRIA

1. motion filed December 16, 1975 to proceed pro se;
2. motion filed December 16, 1975 for return of personal property and to suppress all evidence obtained at time of arrest;
3. motion filed January 5, 1976 for more time to make motions;
4. motion filed January 6, 1976, returned for failure to comply with Local Rule 3;
5. motion filed February 2, 1976 seeking (1) to dismiss indictment for denial of speedy trial based on pre-indictment delay, (2) to obtain copies of Government exhibits in former proceedings, (3) to obtain documents, internal memoranda and 3500 material;
6. motion filed March 9, 1976 to suppress evidence unlawfully seized;
7. motion filed March 9, 1976 seeking (1) to suppress statements taken in violation of fifth and sixth amendments, (2-4) severance on several grounds, (5) a Government paid, defense-chosen expert assistant, (6) to join in all motions of co-defendants, (7) a hearing on factual issues raised in motion, (8) to dismiss the indictment for repugnancy, (9) additional time to move against the indictment;
8. motion filed on March 22, 1976 seeking (1) to dismiss indictment on grounds of former jeopardy, res judicata, collateral estoppel, and comity, (2) an order requesting information from Mexican Government, (3) an order directing Government to produce certain information and evidence, (4-5) to dismiss the indictment on the ground of double jeopardy, (6) to permit defendant to inspect grand jury minutes, (7) to dismiss indictment because defendant was singled out for prosecution in violation of Department of Justice policy on double jeopardy, (8) for a hearing on factual issues raised by motion, (9) to permit defendant to submit former jeopardy issue to jury;
9. motion filed March 29, 1976 to direct Government to stop illegal and unethical conduct;
10. motion filed April 5, 1976 to dismiss the indictment because cocaine has been misclassified as a narcotic drug;
11. motion filed April 5, 1976 for appointment of Martin Sostre as trial interpreter;



12. motion filed April 13, 1976 for prompt disposition of the case;
13. motion filed April 17, 1976 for court to disregard prosecutor's statements;
14. motion filed April 21, 1976 to dismiss indictment based on additional actual prejudices;
15. motion filed April 23, 1976 to dismiss indictment for failure to allege violation of statutes on which indictment is based;
16. motion filed April 23, 1976 seeking (1) to dismiss indictment for pre-indictment delay, (2) permission to travel to Mexico, (3) travel expenses;
17. motion filed April 28, 1976 to require Government to produce files from archives;
18. motion filed April 28, 1976 to dismiss indictment pursuant to Single Convention on Narcotic Drugs;
19. order to show cause filed May 27, 1976 to obtain exhibit;
20. motion filed June 2, 1976 to dismiss indictment for denial of speedy trial based on post-indictment delay;
21. order to show cause filed June 30, 1976 to obtain facts and documents;
22. motion filed July 1, 1976 seeking (1) a bill of particulars, (2) discovery and inspection, (3) information regarding Government informer, (4) additional time to move against indictment.

FOR REYES

1. motion filed June 7, 1976 seeking (1) to dismiss the indictment pursuant to the Constitution and the Federal Rules of Criminal Procedure, (2) additional discovery, (3) to join in motions of all other defendants.

## EXCERPT FROM MINUTES DATED NOV. 14, 1975

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 - - - - - X

4 UNITED STATES OF AMERICA,

5 - vs. -

75 Cr. 1035

6 GERARDO SANCHEZ, a/k/a GEORGE SCOTT,

7 a/k/a/ "MONGUIN", HECTOR ECHEVERRIA,

8 a/k/a LIBORIO MORALES,

9 Defendants.

10 - - - - - X

November 14, 1975  
3:00 p.m.

11  
12 Before: HON. EDWARD WEINFELD,  
13 District Judge

14  
15 APPEARANCES

16 THOMAS J. CAHILL, ESQ.  
17 United States Attorney for the  
18 Southern District of New York

19 BY: DANIEL J. BELLER, ESQ.  
20 Assistant United States Attorney, of Counsel.

21 ROBERT MITCHELL, ESQ.  
22 Attorney for the Defendant Echeverria.

23 THOMAS H. O'ROURKE, ESQ.  
24 Attorney for the Defendant Sanchez.

25

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2 Mr. Sanchez.

3 THE COURT: Before you go into that, what is the  
4 explanation, if you would care to make it upon the record,  
5 for the delay in this indictment? The indictment alleges  
6 conspiracy. It was from December 1, 1970 to December 30, 1970.

7 MR. BELLER: Your Honor, I can only state that  
8 this office in the Southern District of New York was apprised  
9 of the existence of this case approximately a month ago.

10 THE COURT: Advised by whom?

11 MR. BELLER: I was the assistant in charge of the  
12 prosecution of Luis Reyes for another offense. In the pre-  
13 paration of that prosecution a file with respect to this case  
14 was made available to me. I went to the file at that time.

15 THE COURT: Is this the way prosecuting authorities  
16 function? A file disappears and you happen to be working on  
17 one case and incidentally come across this information?

18 MR. BELLER: Your Honor, I can --

19 THE COURT: I read Mr. Curran's report. I have  
20 some observations about that report. Maybe I'll note this  
21 one too. Parts of it are extremely interesting and other  
22 parts in my judgement raise some questions. I haven't made  
23 up my mind. I may write to them.

24 What you are saying is that you worked on a matter  
25 and incidentally this came to your attention?

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9

2 MR. BELLER: The case file was itself in Florida.

3 THE COURT: If it had not come to your attention,  
4 the statutes of limitations would be running in a matter of  
5 about almost six weeks.

6 MR. BELLER: That is correct.

7 THE COURT: Is this the way the criminal laws are  
8 enforced?

9 MR. BELLER: Your Honor, there is an explanation.

10 THE COURT: I am not holding you accountable. I'm  
11 sure that somebody is going to offer an explanation. Whether  
12 or not it is a valid explanation is something else. The in-  
13 dictment is here. You are within the statute of limitations.  
14 What is the problem?

15 MR. BELLER: Just to respond to some of the  
16 statements made by Mr. O'Rourke, Mr. Sanchez, as far as I'm  
17 aware, first worked as an interpreter for the government in  
18 the case of United States vs. Ortega, a case tried by Shirrah  
19 Nieman in, I believe, March of 1974.

20 THE COURT: Neither one of you had any knowledge  
21 of his prior conviction?

22 MR. BELLER: I will tell you in just a moment.

23 THE COURT: I would like to get the facts. This  
24 is really a revelation.

25 MR. BELLER: Here they are. He was going to



MINUTES DATED SEPTEMBER 9, 1976

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
UNITED STATES OF AMERICA, :  
:  
vs. : 45 Cr. 1095  
:  
HECTOR ECHEVERRIA, et al., :  
:  
Defendants. :  
:  
-----X

Before;

HON. HENRY F. WERKER,  
District Judge.

New York, September 9, 1976;  
3.00 o'clock p. m.  
(Room 312)

APPEARANCES:

ROBERT B. RISKE, JR. Esq.,  
United States Attorney for the  
Southern District of New York;  
BY: ALAN LEVINE, Esq.,  
Assistant United States Attorney.

HECTOR ECHEVERRIA, pro se

THOMAS H. O'ROURKE, Esq.,  
Attorney for the Defendant  
Gerardo Sanchez.

(Interpreter: Ileana Fuentes.)  
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1  
2 THE CLERK: United States of America versus  
3 Hector Echeverria.

4 MR. O'ROURKE: Your Honor, I am here on behalf  
5 of the defendant Sanchez and I am also standing in for  
6 Mr. Robert Mitchell, who represents Mr. Echeverria.

7 THE COURT: He was here a moment ago.

8 MR. O'ROURKE: Yes, but he is on trial before  
9 Judge Owen. Mr. Edward Panzer should be here. He  
10 represents the defendant Reyes, but he probably didn't get  
11 the telegram. I received the telegram today to report  
12 here.

13 THE COURT: The purpose of this pretrial is to  
14 set a date for trial and I will ask you what your schedule  
15 is, Mr. O'Rourke, from the defendant's standpoint.

16 MR. O'ROURKE: The defendant Sanchez is ready.  
17 I spoke to Mr. Flannery today. He is the United States  
18 Attorney assigned to the case. I told him that I was  
19 prepared to start tomorrow morning.

20 THE COURT: Mr. Flannery is not prepared to  
21 start tomorrow morning nor is the Court.

22 MR. O'ROURKE: So I understand. I learned that  
23 today.

24 MR. LEVINE: The Government is ready for trial.

25 THE COURT: My trial schedule is going to be



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2 involved here.

3 Have you got a date for me as far as the Govern-  
4 ment is concerned? What is your last date?

5 MR. LEVINE: Your Honor, the last date in  
6 terms of the Speedy Trial Act?

7 THE COURT: Yes.

8 MR. LEVINE: I am not sure of that. I advised  
9 Mr. Flannery of your Honor's trial schedule, knowing it  
10 personally, and he said that it appeared that some time in  
11 November would be fine with the Government.

12 MR. O'ROURKE: Your Honor, the date of arrest  
13 here was December, 1975. The acts charged allegedly took  
14 place in 1970. Mr. Levine stated the Government is  
15 ready. It is my understanding that the Government is  
16 not ready, that Mr. Flannery's schedule does not permit him  
17 to start immediately. He has a problem with witnesses  
18 coming from another country.

19 THE COURT: I am going to put it down for trial  
20 on the 8th of November, 10 a.m.

21 MR. O'ROURKE: Mr. Echeverria, the co-defendant,  
22 represents himself, and through the interpreter he has  
23 asked me if I would ask for permission for him to address  
24 the Court.

25 (Ileana Fuentes acted as official Spanish

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1 interpreter for the defendant Echeverria.)

2  
3 DEFENDANT ECHEVERRIA: Your Honor, I would  
4 like to know if you have received my letter of September 3rd?

5 THE COURT: I received it this morning.

6 DEFENDANT ECHEVERRIA: If I may make reference  
7 to the Court's minutes of March 22 with regard to records  
8 from the Mexican jail or penitentiary, your Honor stated  
9 at that time that receipt of these documents would be vital  
10 to the case and you instructed the prosecutor to assist me  
11 in obtaining these documents. I have been informed  
12 today that no records have been received. The detainer  
13 has not been received from Mexico, and I would like to  
14 request these records again since I feel that they are  
15 essential for my defense.

16 THE COURT: I will again ask the United States  
17 Attorney if he will attempt to get those documents.  
18 It seems to me that somewhere in the papers I have seen  
19 some statement to the effect that they were unavailable,  
20 and, consequently, if that is true I think Mr. Flannery has  
21 to go through the file to find out what has happened.

22 DEFENDANT ECHEVERRIA: You are referring to  
23 the records of the Mexican jail?

24 THE COURT: I understand that.

25 MR. LEVINE: Your Honor, I will communicate



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2 that to Mr. Flannery and advise him to advise chambers.

3 THE COURT: Yes, as quickly as possible.

4 But it seems to me there is something in the record, either  
5 by way of a letter or something of that sort, which indicates  
6 that they were not available, that the file had disappeared.  
7 That is my recollection.

8 DEFENDANT ECHEVERRIA: I would like to present  
9 as a defense to the jury the issue of prejudice in violation  
10 of the Sixth Amendment, and I base that on rulings mde in  
11 the case of May versus Georgia on May 20, 1969 and  
12 Grafifi versus United States of America of November,  
13 1975.

14 THE COURT: That is a question of law for the  
15 Court and the Court has already decided it.

16 DEFENDANT ECHEVERRIA: You are denying my  
17 request?

18 THE COURT: I am denying the request. I am not  
19 denying to you the ability through cross-examination to  
20 bring out the facts and circumstances as to the date of  
21 the alleged crime and the date when you were arrested and  
22 the date when you were indicted.

23 DEFENDANT ECHEVERRIA: I would like to know in  
24 view of your decision that you are not concerned whether  
25 United States agents participated and were involved in my

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1  
2 arrest in Mexico. I would like to know if it is the  
3 Court's opinion that the Speedy Trial laws of the Sixth  
4 Amendment have not extraterritorial application.

5 THE COURT: That is something that I do not have  
6 to decide. All I have to decide. All I have to  
7 decide is whether it has territorial application. I don't  
8 have to decide that issue. It is material to this problem  
9 that we have.

2 10 MR. O'ROURKE: Your Honor, one further point.

11 You indicated the trial would start November  
12 8th. Your Honor has indicated you would conduct pre-  
13 trial hearings. Would they start November 8th?

14 THE COURT: They would start November 8th.

15 That is your motion to suppress?

16 MR. O'ROURKE: That is right.

17 THE COURT: The trial will commence immediately  
18 thereafter.

19 ---  
20  
21  
22  
23  
24  
25



40  
EXCERPT FROM MINUTES DATED NOV. 9, 1976

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UNITED STATES DISTRICT COURT.  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

GERARDO SANCHEZ, a/k/a George Scott,  
a/k/a "Monguin", LUIS REYES, a/k/a  
"Gordo", and HECTOR ECHEVERRIA, a/k/a  
"Liborio Morales",

Defendants.

S75 Cr. 1095

Before:

HON. HENRY J. WERKER,  
District Judge.

New York, November 9, 1976;  
10.00 o'clock a.m.  
(Room 312)

APPEARANCES:

ROBERT B. FISKE, JR., Esq.,  
United States Attorney for the  
Southern District of New York;

BY: MARC MARMARO, Esq.,  
Assistant United States Attorney.

THOMAS H. O'ROURKE, Esq.,  
Attorney for defendant Sanchez;

BY: JAMES MCGOVERN, Esq., of Counsel.

EDWARD S. PANZER, Esq.,  
Attorney for defendant Reyes.

ROBERT MITCHELL, Esq.,  
Attorney for defendant Echeverria.

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2 ALSO PRESENT:

3 Interpreter Manuel Ras for defendant Reyes

4 Interpreter Ilana Fuentes for defendant Echeverria

5  
6 ---

7  
8 THE CLERK: United States of America versus  
9 Gerardo Sanchez, Luis Reyes and Hector Echeverria.

10 Is the Government ready?

11 MR. MARMARO: The Government is ready.

12 THE CLERK: Defendant Sanchez?

13 MR. McGOVERN: Defendant Sanchez ready.

14 MR. PANZER: Defendant Reyes ready.

15 MR. MARMARO: We need an interpreter for  
16 Mr. Reyes.

17 THE COURT: All right, I won't take Mr.  
18 Echeverria until Mr. Mitchell is available.

19 MR. PANZER: We have an official court inter-  
20 preter here for Mr. Reyes.

21 THE COURT: Yes.

22 Would you swear both interpreters, please.

23 MR. PANZER: There are two interpreters -- one  
24 for Mr. Echeverria and the other for Mr. Reyes.

25 (Whereupon Manuel Ras was sworn in as inter-



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preter for defendant Reyes.)

(Whereupon Ilana Fuentes was sworn in as interpreter for Mr. Echeverria.)

MR. MARMARO: May it please the Court, the Government would like to hand up for filing superseding informations against each of these defendants. There are separate informations for Mr. Sanchez, Mr. Reyes and Mr. Echeverria (handing).

THE COURT: I would like each of the defendants to rise and listen to me.

MR. McGOVERN: May I be heard, your Honor?

THE COURT: Yes.

MR. McGOVERN: I believe that there is before the Court a motion made on behalf of Mr. Sanchez, addressed to this indictment.

There is also before the Second Circuit right now a mandamus which has not been disposed of.

In order to do more than protect the record, your Honor -- that is not my only purpose here -- I would ask for a ruling upon these motions, your Honor, and an argument required by the Court concerning this prior to any disposition.

THE COURT: Then you are not ready for a plea.

MR. McGOVERN: Not until the matter is disposed

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2 of relative to that motion.

3 THE COURT: I cannot dispose of a mandamus,  
4 Mr. McGovern.

5 MR. McGOVERN: Then perhaps the Court can  
6 dispose first of the motions that were addressed to the  
7 indictment, particularly the speedy trial issue, prior to  
8 any further proceedings in this matter.

9 THE COURT: I can tell you right now, that  
10 based on the record that I have, I have denied the motions.

11 They were disposed of by the decision which  
12 this Court rendered on July 16, 1976, and that would  
13 apply to Mr. Sanchez' motions as well as Mr. Echeverria's  
14 motions.

15 I think there was at least one new matter which  
16 was brought up involving presenting to or permitting  
17 counsel to present to the jury matter involving pre-  
18 indictment information.

19 I have denied that, because, in the first  
20 instance, I disposed of that along with the other issues  
21 in the July 16, 1976 decision.

22 MR. McGOVERN: I believe, your Honor that  
23 subsequent to that, at least on September 1st, 1976 -- and  
24 I am speaking now with reference to the Second Circuit's  
25 rules for a speedy trial -- that the defendant Sanchez,



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1 through his attorney, Mr. O'Rourke, answered "Ready" at  
2 that time, and I believe that the Government was not ready  
3 at that time to proceed.  
4

5 That is another issue before this Court.

6 THE COURT: I do not believe that the Government  
7 was ever not ready to proceed in this matter.

8 MR. MARMARO: That is correct. The Govern-  
9 ment filed a notice of readiness on March 1st, 1976.  
10 This was after Mr. Beller announced readiness at a pre-  
11 trial conference in February 1976.

12 The Government stood ready to try this case,  
13 and any delay in setting a trial date has been the result  
14 of the defendants' pretrial motions, and the normal  
15 scheduling problems that the Court and counsel have --  
16 but primarily the delay has been as a result of numerous,  
17 and frivolous, pretrial motions raised by the defendants.

18 THE COURT: Each of them had to be considered  
19 by the Court in each instance.

20 MR. McGOVERN: I call the Court's attention to  
21 the proceedings on September 1st in which Mr. Flannery,  
22 the Assistant then assigned to the trial of this case,  
23 was not present and was not ready to proceed.

24 THE COURT: He was on trial.

25 MR. McGOVERN: That, your Honor, should not be

1        mks  
2        held against this defendant.        This case, two days  
3        from now or three days from now, even prior to the indict-  
4        ment, will be a year old, and on that date, September 1st,  
5        it was nine months old or ten months old, and he was  
6        ready to proceed and Mr. Flannery was not.

7                MR. MARMARO: For the record, at that pretrial  
8        conference Mr. Alan Levine, representing the Government,  
9        stated that the Government was ready for trial.        The  
10       fact that one counsel may be engaged did not prevent the  
11       Court from setting the matter down and requested our  
12       office to assign another Assistant, which is in fact what  
13       happened.

14               THE COURT: That is what I did.

15               MR. McGOVERN: There is then a second matter,  
16       and that is this, that the defendant, who was discharged  
17       from probation in June of 1976, lost totally the oppor-  
18       tunity -- and I use the word "opportunity" because that  
19       is what my reading of the law is -- to be sentenced con-  
20       currently by this Court, or any other Court.

21               It is not a matter of whether the Court would  
22       do it or not.        He lost the opportunity when he was dis-  
23       charged from probation in June of 1976 to be sentenced  
24       concurrently in this matter, and this indictment was  
25       pending from December 1971.



1                   THE COURT: That I consider to be completely  
2 speculative, and I did not intend to dismiss any indict-  
3 ment.  
4

5                   MR. MCGOVERN: We also, your Honor, would argue  
6 that that issue for a jury to determine whether or not  
7 that loss of time --

8                   MR. MARMARO: We would totally oppose all  
9 these motions, your Honor.

10                  THE COURT: And I say that is a frivolous  
11 motion -- it should not be distinguished by counsel on a  
12 plea.

13                  MR. MCGOVERN: Thank you.

14                  THE COURT: Mr. Echeverria, you understand  
15 that I have denied your motions for the reasons that I  
16 have stated with respect to Mr. Sanchez' motions, that is,  
17 that they were disposed of earlier on by my decisions,  
18 and with respect to the order to show cause which has --  
19 well, this was an order to show cause on behalf of Mr.  
20 Sanchez -- this was brought on yesterday, and sent in by  
21 mail on November 5th.

22                  MR. MCGOVERN: Yes, your Honor.

23                  THE COURT: And of course it was not signed,  
24 I would not sign it. Of course I will not grant a stay  
25 pending the writ.

All right, with that in mind, gentlemen --

MR. PANZER: Judge, just to make the record clear, you mentioned Mr. Echeverria and Mr. Sanchez. Mr. Reyes has also made a motion, and I believe your Honor disposed of those motions back in July.

THE COURT: Yes, I did.

MR. PANZER: I just want the record to reflect that.

THE COURT: Yes.

MR. MARMARO: And the record should reflect that all pretrial motions have been disposed of by the Court, and there is nothing presently outstanding.

THE COURT: That is right.

All right, if you will stand, gentlemen, I will advise you as to your constitutional rights.

(The defendants stand.)

THE COURT: You are advised that if you do not plead guilty to the count --

It is one count in the information?

MR. MARMARO: It is one count, but perhaps your Honor should advise the defendants of their right to a grand jury indictment on the information.

THE COURT: All right, I will so advise them.

You all understand that you are entitled to



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2 have your case presented to a grand jury, and if you  
3 plead to this information you are waiving that right.

4 Has there been a waiver signed?

5 MR. MARMARO: Each defendant has been supplied  
6 with waiver forms. I ask that it be executed and handed  
7 up for filing.

8 MR. PANZER: I might say for the record, your  
9 Honor, I went over to MCC last night. I spoke to Mr.  
10 Reyes, through an interpreter, and I explained to him the  
11 whole function of the grand jury, and I informed him of  
12 the new charge, that the Government would proceed by way  
13 of information, and he agreed that that is what he wants to  
14 do, to proceed by way of that information.

15 I explained the charge to him. He executed  
16 the waiver of indictment in triplicate. I have signed  
17 it and witnessed it, and I am prepared to offer it up to  
18 your Honor at this time.

19 THE COURT: All right.

20 MR. MARMARO: I think additionally in the case  
21 of Echeverria, who is representing himself, I believe Mr.  
22 Mitchell is advising and has consulted with Mr. Echeverria,  
23 and Mr. Echeverria should so state for the record.

24 THE COURT: Does Mr. McGovern want to put some-  
25 thing on the record?

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2 Have you explained to Mr. Sanchez the import  
3 of that document?

4 MR. MCGOVERN: I have explained to him the  
5 import of the indictment, of the waiver of the indictment  
6 to the defendant, and he has signed it (handing).

7 THE COURT: Mr. Echeverria, did you consult  
8 with Mr. Mitchell concerning this waiver of indictment?

9 DEFENDANT ECHEVERRIA: (Through interpreter)  
10 Yes, your Honor.

11 THE COURT: When did you do that?

12 DEFENDANT ECHEVERRIA: This morning.

13 THE COURT: And you understand that you are  
14 waiving the right -- you are giving up the right to have  
15 your case presented to a grand jury?

16 DEFENDANT ECHEVERRIA: Yes, your Honor.

17 THE COURT: And you do this voluntarily?

18 DEFENDANT ECHEVERRIA: Yes, your Honor.

19 THE COURT: Mr. Reyes, you have done this  
20 voluntarily?

21 DEFENDANT REYES: (Through interpreter)

22 Yes, sir.

23 THE COURT: And, Mr. Sanchez, you have done it  
24 voluntarily?

25 DEFENDANT SANCHEZ: Yes, sir.



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2 THE COURT: All right, I will accept the  
3 waivers.

4 Where is Mr. Echeverria's waiver?

5 THE INTERPRETER: Mr. Mitchell has it.

6 THE COURT: We will get it when Mr. Mitchell  
7 comes back.

8 All right. You are advised that if you do  
9 not plead guilty to any count or counts of this information,  
10 you would be presumed to be innocent under the law.

11 You would have the right to a speedy and  
12 public trial by an impartial jury of 12 people, or a  
13 trial by the Court sitting without a jury if the jury trial  
14 is waived.

15 Upon the trial, the burden would be upon the  
16 Government to establish your guilt beyond a reasonable  
17 doubt to the satisfaction of all 12 jurors, or to the  
18 Court.

19 Upon a trial you would have the right to  
20 remain silent, and your silence could not be held against  
21 you.

22 If you wished, you could testify in your own  
23 behalf but you could not be compelled to take the stand,  
24 and no inference could be drawn against you from your  
25 failure to do so.

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2 You would be entitled to see and hear the  
3 witnesses against you, and your lawyer could cross-  
4 examine them.

5 You would be entitled to use the compulsory  
6 processes of the Court, get witnesses to testify, and  
7 to obtain documentary evidence to be offered in your  
8 defense.

9 If your plea of guilty is accepted, you give  
10 up all of these rights with respect to the information upon  
11 which you pleaded guilty, and the Court would have the  
12 same power to sentence you as if you had been found guilty  
13 after a trial on that count.

14 Before the Court can accept the plea of guilty,  
15 it must determine whether the plea is made voluntarily,  
16 with an understanding of the nature of the charges.

17 You will be asked to state, therefore, what the  
18 charges against you are, and also whether you are under  
19 the influence of any narcotics, drugs, pills or medicines  
20 which would in any way impair your ability to understand  
21 the nature of the charges and the consequences of your  
22 pleading.

23 You must also be prepared to advise the Court  
24 of the factual basis of your plea of guilty, and whether  
25 or not you intentionally committed the acts charged against



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2 you.

3 The Court must also determine that your  
4 guilty plea is not induced by any promises of leniency  
5 or any other consideration or by any threats.

6 I want to warn you not to plead guilty unless  
7 you are in fact guilty of the charge made against you in  
8 the count of the information to which you are pleading.

9 Upon acceptance of the plea there will be no  
10 further right to any trial of any kind.

11 All right.

12 MR. MARMARO: Your Honor, with respect to  
13 Mr. Evheverria, can you once again advise Mr. Echeverria  
14 that he has the right to have counsel appointed for him,  
15 and he has chosen voluntarily to go ahead pro se.

16 THE COURT: Yes.

17 Mr. Echeverrio, the Court once more advises  
18 you that you have a right to have counsel appointed for  
19 you, and you have informed the Court that it is your wish  
20 that you proceed pro se.

21 Is that still your wish?

22 DEFENDANT ECHEVERRIO: Yes.

23 THE COURT: Now, Mr. Echeverrio and Mr. Reyes,  
24 you may sit down; we will take Mr. Sanchez first.

25 (Defendants sit down.)

1 mks

2 THE COURT: Mr. Sanchez, will you state your  
3 name for the record, please?

4 You might step forward, nearer to the  
5 reporter.

6 MR. MARMARO: Your Honor, while the defendant  
7 Sanchez is moving forward, perhaps I can state for the  
8 record the penalty range for each of the defendants.

9 THE COURT: I have it.

10 DEFENDANT SANCHEZ: My name is Gerardo Sanchez --  
11 Ballate is my second last name.

12 THE COURT: And how old are you, Mr. Sanchez?

13 DEFENDANT SANCHEZ: 34.

14 THE COURT: And how far did you go in school?

15 DEFENDANT SANCHEZ: Graduate school.

16 THE COURT: Graduate school. What school?

17 DEFENDANT SANCHEZ: John Jay College of

18 Criminal Justice.

19 THE COURT: And where do you live?

20 DEFENDANT SANCHEZ: 717 West 177th Street.

21 THE COURT: Do you live with anyone?

22 DEFENDANT SANCHEZ: My mother, and my uncle,

23 and aunt.

24 THE COURT: Are you married?

25 DEFENDANT SANCHEZ: No, single.



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2 THE COURT: And what do you do for living?

3 DEFENDANT SANCHEZ: I do research for attorneys;

4 I serve as interpreter; prepare papers.

5 THE COURT: Have you ever been addicted to  
6 narcotics?

7 DEFENDANT SANCHEZ: No, sir.

8 THE COURT: Are you currently under the care of  
9 a doctor?

10 DEFENDANT SANCHEZ: No.

11 THE COURT: Are you taking any kind of  
12 medication which would impair your ability to understand  
13 what I am saying to you now?

14 DEFENDANT SANCHEZ: No.

15 THE COURT: Now you have been represented by  
16 Mr. O'Rourke. Have you had time to consult with Mr.  
17 O'Rourke about this matter, and are satisfied with  
18 the device which he has given you?

19 DEFENDANT SANCHEZ: Yes, sir.

20 THE COURT: And you are today represented by  
21 Mr. McGovern, who is standing in for Mr. O'Rourke who is  
22 on trial in another part; is that correct?

23 DEFENDANT SANCHEZ: Yes.

24 THE COURT: And are you satisfied to have Mr.  
25 McGovern representing you?

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DEFENDANT SANCHEZ: Yes, your Honor.

THE COURT: Have you read this information against you?

DEFENDANT SANCHEZ: Yes, your Honor.

THE COURT: Will you tell me what the charge is against you?

DEFENDANT SANCHEZ: Conspiracy.

THE COURT: Conspiracy to do what?

DEFENDANT SANCHEZ: Conspiracy to import narcotics in violation of the tax laws or without tax stamps.

THE COURT: Would you agree that it was a conspiracy to import a narcotic drug -- the narcotic drug not being in its original stamped package?

DEFENDANT SANCHEZ: Yes, your Honor.

THE COURT: Would that be agreeable?

DEFENDANT SANCHEZ: Yes.

THE COURT: You understand what that means.

DEFENDANT SANCHEZ: Yes, I do.

THE COURT: Now have you read and signed the acknowledgment of advice as to your constitutional rights?

DEFENDANT SANCHEZ: Not yet.

MR. McGOVERN: He has not -- he is about to.



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(Defendant Sanchez reads and then signs  
the document.)

MR. McGOVERN: He has read it, your Honor.

THE COURT: Yes, you have read it and you have  
now signed it?

DEFENDANT SANCHEZ: Yes, Your Honor.

THE COURT: Do you understand it?

DEFENDANT SANCHEZ: Yes, I do.

THE COURT: Is there any question you would  
like to ask the Court about it?

DEFENDANT SANCHEZ: Frankly, yes.

THE COURT: What is it?

DEFENDANT SANCHEZ: Well , I am responsible --  
I honestly think that I am guilty but I honestly think  
my constitutional rights were violated, and in my mind  
they were.

THE COURT: I understand, but that has been  
resolved against you by the Court's decision.

DEFENDANT SANCHEZ: That is the only --

THE COURT: You are talking about your speedy  
trial.

DEFENDANT SANCHEZ: And my double jeopardy.

THE COURT: But those were both resolved  
against you by the Court's decision.

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2                   DEFENDANT SANCHEZ: That was my only comment.

3                   THE COURT: Yes.

4                   MR. MARMARO: Your Honor, it should be clear  
5 that the defendant is giving up all these rights by  
6 pleading to the superseding information, and that he will  
7 not take any further action with respect to those rights.

8                   THE COURT: You have no right to appeal.

9                   DEFENDANT SANCHEZ: I am waiving it.

10                  THE COURT: Yes; you understand that.

11                  DEFENDANT SANCHEZ: Yes.

12                  THE COURT: Do you realize that if the Court  
13 accepts your plea, the Court has the power to impose a  
14 sentence of from two to ten years imprisonment, and/or a  
15 \$20,000 fine?

16                  DEFENDANT SANCHEZ: And/or a suspended sentence  
17 and/or probation.

18                  THE COURT: I do not know whether that is true  
19 or not. There are certain provisions of the law, and  
20 depending upon what your prior record may or may not be,  
21 it could be something more. I might be prohibited from  
22 giving you probation or a suspended sentence.

23                  DEFENDANT SANCHEZ: That is not my understanding,  
24 your Honor.

25                  THE COURT: Have you ever been convicted of a



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2 crime involving Title 39?

3 DEFENDANT SANCHEZ: Title 39? No, your Honor.

4 What is Title 39? -- narcotics?

5 THE COURT: 26 USC 4701 and 4703 -- I am sorry,

6 I misspoke myself.

7 It is Chapter 39 of the Internal Revenue Code --  
8 right?

9 I want to know whether you have ever been  
10 convicted of any crime involving the same -- actually the  
11 same kind of crime.

12 DEFENDANT SANCHEZ: No, your Honor.

13 THE COURT: You have not.

14 DEFENDANT SANCHEZ: No, your Honor.

15 MR. MARMARO: We know of none, your Honor.

16 THE COURT: All right. I want to make that  
17 clear on the record --

18 MR. MARMARO: Yes.

19 THE COURT: -- because otherwise I am  
20 prohibited by law from suspending sentence or giving you  
21 probation, but inasmuch as the Government has conceded  
22 that they have no such conviction, I can also give you a  
23 suspended sentence or probation.

24 DEFENDANT SANCHEZ: Yes, your Honor.

25 THE COURT: All right. And you still wish

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2 to plead guilty?

3 DEFENDANT SANCHEZ: Yes, your Honor.

4 THE COURT: Have any promises been made to you  
5 to induce you to plead not guilty?

6 DEFENDANT SANCHEZ: Not to induce me -- I have  
7 considered certain -- there was some conversations, I  
8 understand, between my attorney and the Government's  
9 attorney as to the position the Government would take,  
10 but nothing has been told to induce me.

11 THE COURT: With respect to what?

12 DEFENDANT SANCHEZ: It is my understanding that  
13 the Government, at the time of sentence, will not -- will  
14 only state -- I mean, is reserving the right to state my  
15 participation, after an investigation, in this criminal  
16 act.

17 MR. MARMARO: Your Honor, the Government is  
18 reserving all rights to make whatever statement it feels  
19 on sentence is justified. Mr. McGovern, of course, would  
20 have the right to make any statement that he feels is  
21 justified. The only thing that the Government has  
22 promised th is defendant -- and I think the record should  
23 be absolutely clear -- is that with respect to the indict-  
24 ment now pending against Mr. Sanchez, when the judgment  
25 on the superseding information becomes final, the Govern-



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2 ment will not be pros. That is the only promise, and that  
3 will only occur when final judgment is entered on the  
4 superseding information.

5 MR. McGOVERN: May I be heard, your Honor?

6 THE COURT: Yes.

7 MR. McGOVERN: My conversations with Mr.  
8 Marmaro revealed the following:

9 That statements made by the Government will  
10 not be made on hearsay or upon rumor concerning Mr.  
11 Sanchez. It would be based upon criminal acts of which  
12 they believe him to be guilty -- that that is my under-  
13 standing.

14 MR. MARMARO: Your Honor, I do not know what  
15 Mr. McGovern means by hearsay or rumor. The Government  
16 will make whatever statements it feels are justified by  
17 this defendant's past. Mr. McGovern will have a  
18 chance to respond and give his position vis-a-vis anything  
19 the Government says.

20 The Government -- and I have stated this to  
21 Mr. McGovern -- is not tying its hand in any respect  
22 vis-a-vis the position we might take on sentencing --  
23 and I just think the record should be absolutely clear.

24 THE COURT: There has been no agreement as to  
25 any recommendation of any kind.

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2 MR. MARMARO: No agreement one way or the  
3 other.

4 MR. McGOVERN: There is one:

5 That the Government would not seek a definite  
6 period of time, they would not suggest to the Court --

7 THE COURT: They make no recommendation.

8 MR. MARMARO: That is our standard policy.

9 THE COURT: The Government makes no recommend-  
10 ation as to anything.

11 DEFENDANT SANCHEZ: And further, your Honor,  
12 if I may continue, that I was not going to be remanded  
13 today, and that one of the purposes was to clarify because --  
14 in order to clarify this pre-sentence report that I am  
15 working on, my participation in this conspiracy which,  
16 looking at the indictment, is completely misleading.

17 MR. MARMARO: I told Mr. McGovern that we would  
18 not seek a remand today. I said at sentencing our position  
19 might be quite different.

20 I indicated to Mr. McGovern that the pre-  
21 sentence procedure would investigate this defendant and  
22 would investigate his role vis-a-vis others.

23 I am a little unclear as to what Mr. Sanchez  
24 is referring to right now.

25 MR. McGOVERN: Perhaps I can clear it up, your



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2 Honor.

3 THE COURT: Yes.

4 MR. McGOVERN: A man incarcerated between the  
5 time of plea and the time of sentence has limited resources  
6 with which to work in gathering an adequate and sufficient  
7 pre-sentence report -- I believe that to be so.

8 So I spoke to Mr. Marmaro and I asked him,  
9 "Are you going to, at the time of plea, ask for a remand?" --  
10 and he said he would not ask for it.

11 MR. MARMARO: That is accurate, your Honor.

12 MR. McGOVERN: Therefore it is common, and it  
13 is Mr. Sanchez' idea that he wishes to have this time to  
14 present the best possible picture of himself to this  
15 Court.

16 THE COURT: All right; aside from that, have  
17 any threats been made against you or any threats made  
18 against your family to induce you to plead guilty?

19 DEFENDANT SANCHEZ: No.

20 THE COURT: Are you pleading freely and  
21 voluntarily because you are guilty and for no other  
22 reason?

23 DEFENDANT SANCHEZ: Yes, your Honor.

24 THE COURT: Now will you tell me what you did  
25 and when you did it, and where you did it?



One of my clients was a grocery store, and it was sold to a new owner who happened to be Mr. Echeverria. So I went to his place and I started -- he became my client, in my practice, because I was an accountant.

Then we became friends. For the period of about two or three months we exchanged papers and whatever, of accounting records, and I believe that at one point, or rather I told him that I had to go to Mexico to get some visas in Mexico for my family, and so forth, and then he -- how the conversation developed into this I do not remember, but he openly stated that he was like operating in narcotics, and he had a superior or a partner, or whatever, who was a Chilean, and that -- who was receiving narcotics in New York, and he could get a better price if he could receive those narcotics further down in Mexico, and that if I was willing to bring those narcotics.

I don't know how it developed into -- that if I wouldn't be able to do it, that if I could get him somebody to do it. Then -- and he was going to give me a nice amount of money for that.

Then I believe that -- I believe that I didn't



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2 want to get involved in -- like I was afraid to do it,  
3 but then I said I would try to get him somebody to do  
4 that.

5 So I went and spoke with Mr. Reyes, and told  
6 him if he could, you know --

7 THE COURT: Where did you see Mr. Reyes?

8 DEFENDANT SANCHEZ: Well, this Mr. Reyes was also a  
9 client in my accounting practice.

10 THE COURT: And where did you see him?

11 DEFENDANT SANCHEZ: I saw him in Miami at this  
12 time, because I was managing Mr. Reyes' theatre at this  
13 point.

14 THE COURT: And where did you have this con-  
15 versation with Mr. Echeverria?

16 DEFENDANT SANCHEZ: This was in New York.

17 THE COURT: All right.

18 DEFENDANT SANCHEZ: Okay. So I spoke with  
19 him and I said, "Could you find a person that was willing  
20 to do this?"

21 So he introduced me to Julio Fuentes.

22 THE COURT: And where was that, in Miami?

23 DEFENDANT SANCHEZ: In Miami, I believe, yes.

24 Then I told Mr. Echeverria, I believe -- well,  
25 he said he wanted to meet him -- the details I don't know,



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2 so -- oh, then it was agreed that Mr. Echeverria was going  
3 to go to Mexico City. In Mexico City he was going to  
4 pass me an attache case -- valise, whatever it was, at  
5 that time, and that I was to give this to the person who  
6 was going to do the crossing.

7 So I agreed with the person to meet in Mexico  
8 City, and with Mr. Hector Echeverria in Mexico City.

9 We met in Mexico City.

10 THE COURT: Mr. Echeverrio and you.

11 DEFENDANT SANCHEZ: Yes.

12 THE COURT: And who else?

13 DEFENDANT SANCHEZ: Well, just the two of us.

14 THE COURT: All right.

15 DEFENDANT SANCHEZ: Okay -- oh, no, we didn't  
16 meet. He told me where he was going to stay and -- so  
17 when I arrived in Mexico City I called him. I said,  
18 "Here I am. I understand this person who was going to  
19 cross the narcotics should be coming or should get in  
20 touch with me" -- I don't remember the details now.

21 Then I believe this person called me or I  
22 called him where he was going to stay in Mexico City, and  
23 I met -- I was to pick up Mr. Echeverria at some street,  
24 some place; and then inside the taxi -- it was a taxi,  
25 inside the taxi Mr. Echeverria handed me an attache case



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2 and a thousand dollars to be given to the person.

3 He got out, and about two blocks afterwards  
4 that person, Mr. Julio Fuentes, got inside the taxi, and  
5 I gave him at that time the attache case, and the money.

6 Then that person, I understand, got to co-  
7 operate with the Government and informed the Government,  
8 you know, about me, you know, that I was the person.

9 So that person called me in New York, and  
10 after apparently cooperating with the Government, tried to --  
11 I don't know -- started saying a story as to the problems  
12 he had -- I don't know.

13 THE COURT: You knew Mr. Fuentes, didn't you?

14 DEFENDANT SANCHEZ: Yes. Yes. Mr. Fuentes  
15 started calling me, so apparently he was trying to --  
16 I don't know what -- to tape my conversations.

17 Then I informed Mr. Echeverria about it and --  
18 oh, no, I think I told Mr. Reyes. I said, "I don't  
19 understand this, you know", but I told Mr. Echeverria --  
20 I said, "I don't understand this."

21 So then I went to Mr. Reyes and I said, "I don't  
22 know, this man is telling these stories."

23 So Mr. Reyes went there, I believe, to meet  
24 this man, to find out what was happening, so -- and I  
25 told Mr. Echeverria about it, and then I think that this

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2 person -- Mr. Fuentes wanted me and the other person to  
3 go to Mexico because he said, "I left the attache case  
4 in this hotel". So I told Mr. Echeverria about it and  
5 Mr. Echeverria said, "Well, I don't believe this", or  
6 whatever -- that it sounded like a fairy tale.

7 THE COURT: You went to Mexico City?

8 DEFENDANT SANCHEZ: And he said, "Let's go  
9 to Mexico and check it out".

10 THE COURT: You went to Hermosillo?

11 DEFENDANT SANCHEZ: Yes.

12 THE COURT: And you went to a hotel in Hermosillo?  
13 did you not?

14 DEFENDANT SANCHEZ: To the Hotel San Alberto.

15 THE COURT: What did you do in the hotel?

16 DEFENDANT SANCHEZ: Well, while we were in the  
17 lobby we were with two ladies there, and Mr. Echeverria  
18 had registered at the hotel, and when I -- when Mr.  
19 Echeverria -- there was something that had to be brought  
20 from his room and he said, "Could you get it for me so we  
21 can go out with these girls, these ladies", and when I  
22 asked him for the key to his room --

23 THE COURT: Which was room what?

24 DEFENDANT SANCHEZ: Room 129, if I recall  
25 correctly -- since we were under surveillance, they thought



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2 that -- I don't know -- that I had asked for the key to  
3 the other room, and I got arrested.

4 THE COURT: When you received these telephone  
5 calls from Mr. Fuentes you were in New York City, were  
6 you not?

7 DEFENDANT SANCHEZ: Yes, yes, your Honor.

8 THE COURT: And was that on or about December  
9 7th or 8th, somewhere in that area?

10 DEFENDANT SANCHEZ: In that area.

11 THE COURT: Of 1970.

12 DEFENDANT SANCHEZ: Yes, your Honor.

13 THE COURT: And you had reason to believe that  
14 there were narcotics in that case that you delivered to  
15 Mr. Fuentes --

16 DEFENDANT SANCHEZ: Yes.

17 THE COURT: -- did you not?

18 DEFENDANT SANCHEZ: Yes.

19 THE COURT: Did you know what was supposed to  
20 be in the case?

21 DEFENDANT SANCHEZ: I understand cocaine, yes.

22 THE COURT: Did you open it?

23 DEFENDANT SANCHEZ: No, at no time.

24 THE COURT: You did not.

25 DEFENDANT SANCHEZ: No.

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2 THE COURT: Where did Mr. Fuentes call you  
3 from? Did he tell you where he was?

4 DEFENDANT SANCHEZ: I think California or some  
5 place in a border town.

6 THE COURT: Did you know that these narcotics  
7 were never stamped in accordance with the Internal Revenue  
8 Code -- didn't you?

9 DEFENDANT SANCHEZ: Yes, I did know.

10 THE COURT: You knew they were illegal drugs?

11 DEFENDANT SANCHEZ: I knew.

12 THE COURT: That was the whole purpose of the  
13 whole agreement with Echeverria, was it not?

14 DEFENDANT SANCHEZ: Yes, your Honor.

15 THE COURT: Did you also know Roniel Medina?

16 DEFENDANT SANCHEZ: I knew him very --

17 THE COURT: Did you meet with him?

18 DEFENDANT SANCHEZ: No, I did not meet in  
19 Miami with him.

20 THE COURT: You did not?

21 DEFENDANT SANCHEZ: No, I did not.

22 THE COURT: But all of these acts that you did  
23 were in furtherance of this conspiracy to import these  
24 drugs, were they not?

25 DEFENDANT SANCHEZ: Yes.



THE COURT: And you did that purposely,  
knowing it was wrong.

DEFENDANT SANCHEZ: Yes, your Honor.

THE COURT: And you did it intentionally, Mr.  
Sanchez, did you not?

DEFENDANT SANCHEZ: Yes, your Honor.

THE COURT: All right. Then how do you plead  
to this one-count information, guilty or not guilty?

DEFENDANT SANCHEZ: Guilty.

THE COURT: Mr. McGovern, do you know any  
reason why the defendant should not plead guilty?

MR. MCGOVERN: No, your Honor, I do not.

THE COURT: And, Mr. Marmaro, do you represent  
that the Government has sufficient evidence to convict  
the defendant of this charge?

MR. MARMARO: I do, your Honor; I might also  
add that the Government's proof would be somewhat stronger  
as to Mr. Sanchez' participation than he has stated it,  
but I believe that he has --

THE COURT: I understand, but I think there  
is a factual basis --

MR. MARMARO: Oh, yes, there is more than a  
factual basis.

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2 THE COURT: And based upon the fact that this  
3 plea is being entered voluntarily and has a factual basis  
4 for it, and that the defendant in this case understands  
5 the nature of his plea and the consequences thereof, I will  
6 accept his plea.

7 I will release you on the same bail until the  
8 time of sentencing.

9 I will set the date for sentencing on the 20th  
10 of December at 9.30.

11 MR. MARMARO: Will that be in this courtroom,  
12 your Honor?

13 THE COURT: Yes, it will, in this courtroom.

14 MR. PANZER: Will you take Mr. Reyes now, your  
15 Honor?

16 THE COURT: Yes.

17 All right, Mr. Reyes, will you state your name,  
18 please, for the record?

19 DEFENDANT REYES: (Through the interpreter)  
20 Luis Reyes.

21 THE COURT: And how old are you?

22 DEFENDANT REYES: 42.

23 THE COURT: And how far did you go in school?

24 DEFENDANT REYES: Tenth grade.

25 THE COURT: And where do you live?



1b

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

United States of America

-v-

Gerardo Sanchez, a/k/a George Scott, :  
a/k/a "Monquin;" Luis Reyes, a/k/a :  
"Gordo;" Hector Echeverria, a/k/a :  
Liberio Morales, :

S-75 Cr 1095

Defendants.

New York, New York  
December 20, 1976

Before:

HON. HENRY F. WERKER,

District Judge.

Appearances:

For the Government:

MARC MARMARO, Esq.,

Assistant U. S. Attorney

For Defendant Sanchez:

THOMAS H. O'ROURKE, Esq.

For Defendant Reyes:

EDWARD S. PANZER, Esq.

For Defendant Echeverria:

ROBERT MITCHELL, Esq.

(Case called; all parties ready.)

MR. PANZER: Your Honor, I have an application with respect to Mr. Reyes. When he entered his plea on November 9th this year, I indicated to your Honor that there were two matters in the Southern District of Florida

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2 which were tax matters, and I am endeavoring to get those  
3 matters transferred here so that your Honor could sentence him  
4 on all three charges at the same time.

5 Unfortunately, I have been on trial for the past  
6 three weeks and I understand the U. S. Attorney was on trial  
7 and we haven't been able to do that today.

8 We have executed the Rule 20 papers and I would  
9 ask your Honor to adjourn this sentence until we got the  
10 Florida matters before your Honor and he could plead on that  
11 day and your Honor could sentence him on that day on all  
12 matters subject to your Honor's approval.

13 MR. MARMARO: I don't think the matters are  
14 related at all, your Honor. I think your Honor should sentence  
15 Mr. Reyes on the information to which he has pleaded. We  
16 will endeavor a Rule 20. In fact, while I have no opposition  
17 to your Honor taking the other cases, I don't think your  
18 Honor has to take the other cases. They are not related  
19 other than they involve the same defendant.

20 The United States Attorney's office has consented  
21 to a Rule 20 but that is as far as it goes.

22 THE COURT: Incidentally, we haven't sworn the  
23 interpreter. We ought to do that, first.

24 (Interpreter Manuel Ras duly sworn.)

25 THE COURT: Mr. Ras, you have related to Mr.



Reves what preceded your being sworn in, have you not?

MR. RAS: Yes, your Honor.

THE COURT: I really don't see any reason for delaying the sentence. The Rule 20 will undoubtedly be handled in Part I and it may be assigned to me or someone else, so I don't see any reason for the adjournment.

MR. PANZER: Since your Honor has already read the presentence report and there will be no change, may I request that your Honor keep this matter for the Rule 20 purposes and have it referred to your Honor for the plea and the sentence?

THE COURT: I would be unwilling to do that. I think these things should take their normal course under the individual assignment system.

MR. PANZER: Very well.

MR. MARMARO: Your Honor, may I raise a matter common to all three defendants and which relates to the allocution.

Pursuant to Rule 11(c)(5), prior to the entering of the plea, the Court must advise the defendant that if he answers questions under oath on the record in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false statement. Of course, your Honor did not place any of these defendants under oath.

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2             I do think it is arguable, however, that a false  
3 statement prosecution might be brought against these defend-  
4 ants if they made false statements to your Honor during  
5 their allocution.

6             I think your Honor should address the defendants  
7 and ask them if they understand this.

8             THE COURT: I will.

9             Mr. Echevarria, do you require an interpreter?

10            MR. MITCHELL: He has one.

11            THE COURT: Let's swear her, too.

12            (Interpreter Ileana Fuentes duly sworn.)

13            THE COURT: Do you understand what Mr. Marmaro  
14 has said? Rule 11 appears to say that if a defendant is put  
15 under oath upon the allocution and he gives false answers,  
16 that he may thereafter be held for perjury or for false  
17 statements and may be prosecuted for those.

18            Of course, in none of these cases did I put the  
19 defendant under oath and although Mr. Marmaro says it is  
20 arguable that he could be prosecuted for a false statement,  
21 I doubt that that would happen. However, I want you to  
22 understand that, and I also want you to understand at this  
23 point that if you wish at this point to withdraw your plea  
24 on the basis that I have not so instructed you before, you  
25 may do so.



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2           Mr. Reeves?

3           MR. PANZER: He doesn't want to withdraw the plea,  
4    your Honor.

5           MR. O'ROURKE: We don't wish to withdraw the  
6    plea. .

7           MR. MITCHELL: No, your Honor.

8           THE COURT: Now, in the order in which they appear  
9    on the indictment, I think it is Mr. Sanchez who is entitled  
10   to be sentenced first and I want you to be aware of the fact  
11   that I have examined the presentence report and that I have  
12   examined all of the letters which were received by my office.  
13   I don't know by what means they were received, but I  
14   received them in my office and I have read them.

15           Mr. Sanchez, do you wish to say anything in  
16   your own behalf?

17           DEFENDANT SANCHEZ: Yes, your Honor.

18           THE COURT: You may proceed.

19           DEFENDANT SANCHEZ: Your Honor, for the same acts  
20   for which you are going to sentence me today, I spent two of  
21   my birthdays, just next week, as a matter of fact, two  
22   Christmases and two New Years Eves in a Mexican jail,  
23   suffering a lot.

24           Also for the same acts for which you are going  
25   to sentence me, I have spent 13 months under indictment  
  working more than 70 hours a week researching, preparing

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2        papers spending money that I did not have. In "speedy trial"  
3        cases alone I have read over 300 cases; double jeopardy;  
4        illegal search.

5                        In other words, my family also went through a lot.  
6        As a matter of fact, when I told my mother, my aunt -- who  
7        are here in court today -- that I was going to change my  
8        plea they, you know, they didn't know too much about the  
9        possible consequences and they told me, "Well, I don't know  
10       what will happen to you; the way you are going, you are  
11       going to plead yourself to death," because it's 13 months  
12       of suffering, you know, working, without being able to have  
13       a normal life, being restricted to the Southern District,  
14       not being able to move and I think that is suffering and  
15       that's punishment and, in addition to the time in Mexico.

16                      Also as a result of this, I was not able to  
17       continue my education. There is a master's degree --  
18       a Master's Thesis that I haven't finished. That thesis deals  
19       with drug addiction and drug abuse prevention.

20                      Also, your Honor, while at Danbury, I joined  
21       the program on a voluntary basis and I can honestly say  
22       that over 100 drug abuses, narcotics, rehabilitation --  
23       that was a program which is geared for people sentenced under  
24       "Denarro," people that were sentenced to ten years for  
25       crimes and that I recruited, I helped, put many volunteers



1 jb

2 into the program. I think I have contributed a lot to drug  
3 abuse and drug addiction in that respect, with that program.

4 I think I rehabilitated myself in that respect.

5 In addition, I have participated in seminars  
6 dealing with drug abuse. I have been in Europe, in  
7 countries like Germany, Poland, Denmark, extolling the  
8 criminal justice systems and every time I went to those  
9 countries, I visited the drug rehabilitation centers,  
10 discussed possible ways of rehabilitating the residents and  
11 the participants.

12 I don't think there should be any doubt in your  
13 mind that I could get involved in narcotics. This was a  
14 one-time thing and that was it.

15 In 1970 my life was interrupted for the same acts  
16 that you are going to sentence me. I lost my right to  
17 practice my business. You know, if I am interrupted again,  
18 you, it's just -- it will be cruel -- to destroy, to  
19 interrupt my life again for the same acts that were  
20 committed six years ago.

21 I think I have suffered and been punished enough  
22 for that act. My family have suffered a lot.

23 That's it.

24 THE COURT: All right. Mr. O'Rourke?

25 MR. O'ROURKE: If your Honor pleases, your Honor

1     jh  
2     is aware of the fact that the crime for which the defendant  
3     stands convicted took place over six years ago. He spent,  
4     as he eloquently points out, 13 or 14 months in a Mexican  
5     jail, under very horrible conditions and, subsequent to that  
6     time, he was incarcerated at Danbury, Connecticut, for  
7     an incident in Florida.

8             I think Mr. Sanchez points out very well that he  
9     has totally rehabilitated himself and incarceration at this  
10    point would be counterproductive.

11            Mr. Sanchez is a remarkable individual. Not often  
12    do I stand next to a defendant who I know as long as I know  
13    Mr. Sanchez. I know everything that he has said about working  
14    for the last year, 70 hours a week; it is absolutely true.  
15    I know his family, his mother and his aunt, who are present  
16    in the courtroom. He is very devoted to them and he takes  
17    good care of them.

18            When Mr. Sanchez was attending Pace University to  
19    obtain an accounting degree, he was also working seven days  
20    a week and making efforts and saving money to bring his family  
21    from Cuba here to the United States. I have seen him help  
22    out many unfortunate people, including many defendants.

23            Now Mr. Sanchez is engaged to be married. He  
24    has a dream of getting married and returning and picking up  
25    the threads of his accounting practice. I think that he can



1 jh

2 do that and if he is allowed to do it, I know he will be  
3 very successful.

4 I also know that if the Court extends mercy in  
5 this case, the Court will not make an error. I know that Mr.  
6 Sanchez would never appear in court on a criminal charge  
7 again. I ask the Court to extend all possible mercy and  
8 not incarcerate this defendant. I ask that a term of pro-  
9 bation be imposed and, with respect to that, or parole,  
10 the defendant had been on parole for some period of time  
11 here under the supervision of the Southern District and his  
12 record during that time was exemplary.

13 Again I ask the Court for leniency and mercy in  
14 behalf of Mr. Sanchez.

15 THE COURT: All right. Mr. Marmaro?

16 MR. MARMARO: We do not have a statement to make,  
17 your Honor.

18 THE COURT: Is there any legal reason why I  
19 should not now sentence you, Mr. Sanchez?

20 MR. O'ROURKE: No.

21 THE COURT: I have taken into consideration all  
22 of the factors that you have repeated to me this morning.  
23 Of course, I have read the presentence report and I am well  
24 aware, through the voluminous papers which I have considered  
25 during the pendency of this matter, of all of the circum-  
stances that you have related to me.

1  
2 However, the fact is pure and simple and it  
3 remains that the Congress of the United States has given me  
4 a range of punishment within which I may punish and I feel  
5 that these matters, although they occurred many years ago,  
6 nevertheless require a certain amount of punishment.

7 I have no doubt in my own mind that you, as well  
8 as the other defendants who are here before me this morning,  
9 were the prime movers in this matter and I do not have any  
10 doubt at all that a sentence which is made and given within  
11 the statutory limits is not only constitutional but is not  
12 cruel and inhuman.

13 As a consequence, I have come to the conclusion  
14 and it is adjudged that you be committed to the custody of  
15 the Attorney General or his authorized representative for  
16 imprisonment for a term of five years, under 18 USC 4205(a).

17 MR. O'ROURKE: Your Honor, may the defendant be  
18 continued on bail pending an appeal? We will file a notice  
19 of appeal.

20 THE COURT: No, he may not.

21 MR. O'ROURKE: May the defendant be allowed to  
22 surrender after the holidays -- January 10th?

23 THE COURT: No, he may not.

24 MR. O'ROURKE: Your Honor, has your Honor imposed --  
25 would your Honor impose an (a) (2) sentence in this case?



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2                   THE COURT: No. I am remanding the defendant.  
3                   Is there bail here?

4                   MR. O'ROURKE: Yes.

5                   THE COURT: That may be exonerated.

6                   - - - -

7                   THE CLERK: Luis Reyes.

8                   MR. PANZER: Good morning, your Honor.

9                   THE COURT: Do you have anything to say on behalf  
10                  of the defendant?

11                  MR. PANZER: Yes, I do, if I may.

12                  Your Honor, I read the probation report and I am  
13                  sure your Honor has and all the letters that accompanied it.

14                  My reading of that report indicated to me that  
15                  the government felt the probation department felt that Mr.  
16                  Reyes played a lesser role in his involvement in these acts --  
17                  and I don't want to repeat if I don't have to -- which go  
18                  back over six years.

19                  I would like to point out to your Honor that  
20                  Mr. Reyes is currently serving an eight-year sentence imposed  
21                  by Judge Palmieri and that is for acts that occurred sub-  
22                  sequent to the acts in this indictment.

23                  He is 43 years old, your Honor. He is a Cuban  
24                  citizen, had tenth grade education, is married and has three  
25                  dependents -- a wife, boy 15, a girl 14.

STATE OF NEW YORK     )  
                              : SS.  
COUNTY OF RICHMOND    )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 10 day of ~~Jan~~ Feb. 1977 deponent served the within *Appel.*x upon

U.S. Atty., So. Dist. of NY

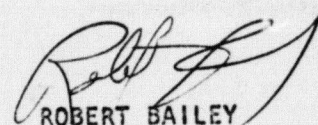
attorney(s) for  
Appellee

United  
1 St. A  
New York

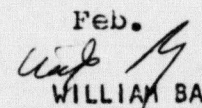
in this action, at

1 St. Andrews Pl.  
NYC

the address(es) designated by said attorney(s) for that purpose by depositing  
  1   copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
ROBERT BAILEY

Sworn to before me, this 10 day  
of Feb. , 1977

  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1978